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THE
SOUTHWESTERN POLITICAL AND
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VOL. X MARCH, 1930 No. 4

SOME LEGAL ASPECTS OF IMPEACHMENT IN LOUISIANA

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INTRODUCTION

It is not our purpose to discuss the confusion in Louisiana politics. This article would be more interesting, perhaps, if the disorders in the House of Representatives were discussed and partisan quotations taken from the speeches of politicians and from editorials[1] were injected here and there to give touches of "local color." There were many situations during the course of the impeachment and trial that tempt one to digress from the legal aspects of the case.[2] But it is necessary to pass by the excitement and startling incidents of political turmoil. The purpose of this paper is to describe the impeachment proceedings as set forth in the Official Journals and then to discuss the constitutional questions which were created when the Governor was called before the Senate to answer the charges presented. All political features are taboo. The writer wishes to show what happened, and then the legality of the whole affair will be noticed. Since all are entitled to opinions, and since any lawyer is entitled to a legal opinion, it is hoped that this article will not "muddy the waters" now beginning to clear by the slow process of precipitation.

THE MEETING OF THE LEGISLATURE

Since the impeachment and trial of Governor Long occurred during a special session of the Legislature and since the chief point of the defense at the Governor's trial was based upon that fact, the constitutional provision for extraordinary sessions should be noted. The Constitution of Louisiana declares that the Governor on extraordinary occasions may con-

[1]See Official Journal, House of Representatives. Fifth Extra Session under the Constitution of 1921 (1929), p. 410 (hereinafter cited O.J. H.R.).

[2]O.J.H.R. pp. 291–2.

vene the Legislature which acts under the following limitation:[3]

> The power to legislate, under the penalty of nullity, shall be limited to the objects specially enumerated in the proclamation of the Governor, or petition and notice, convening such extraordinary session, and the session shall be limited to the time named therein, which shall never exceed thirty days.[4]

Governor Long convened the Legislature in extraordinary session for a "period not to exceed eighteen (18) days, beginning at eight o'clock P.M. on Wednesday, the 20th day of March, A.D. 1929, and ending at twelve o'clock midnight, Saturday, the 6th day of April, A.D. 1929."[5] The official call of the Governor declared that the extraordinary session was called together for the consideration of and action upon fifteen specially enumerated objects, and not one of the enumerated objects mentioned impeachment, either directly or by inference.

The two divisions of the Legislature met and were organized as usual. House Bill No. 1 provided for a privilege tax on oil refining and was read for the first time on Wednesday, March 20, 1929.[6] On the next day House Concurrent Resolution No. 3 condemning the "gas tax" was introduced,[7] and opposition to the Governor's plan to tax the oil companies of the State began to organize.[8] On March 22, the House received a communication that Governor Long had attempted to silence a local newspaper by threatening to expose the fact that the editor had a relative in an insane asylum.[9] Resolutions inferring bribery by the Governor were introduced[10] and excitement began to rise although the Official Journal does not indicate that anything out of the ordinary had happened. The House adjourned Friday, March 22, to meet again at eight o'clock P.M., Monday, March 25. During that period

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[3]Constitution of 1921, Art. V, Sec. 14.

[4]See Van Hecke, "Legislative Power at Special Session," 9 Cornell L.Q., p. 447 (June, 1924).

[5]O.J.H.R., p. 3; Official Journal of the Senate (1929), p. 4 (hereinafter cited O.J.S.).

[6]O.J.H.R., p. 7.

[7]O.J.H.R., p. 9.

[8]The Governor addressed the Legislature on March 21, 1929, but his effort to stay opposition to his policies was futile.

[9]O.J.H.R., p. 18.

[10]O.J.H.R., House Concurrent Resolution No. 4, p. 21.

the press and the political spell-binders waxed hot and opposition to Governor Long became very pronounced. The Long leaders realized that further continuance of the extraordinary session was fraught with danger and talk of adjournment was heard.

The House of Representatives met Monday, March 25, and was called to order by Speaker Fournet. At once Representative Fruge moved that the House adjourn *sine die*. Then Speaker Fournet declared the House adjourned *sine die* by a vote of 67 to 13.[11] Immediately there was pandemonium. Speaker Fournet left the room, and, after the members of the House had worn themselves out giving vent to their emotions, Representative Spencer finally secured another vote which resulted in overruling the vote announced by the Speaker and the House adjourned to meet again on Tuesday, March 26.[12]

The colorless account in the Journal does not begin to express the significance of the affair. The anti-Long men thought that the Governor's followers were attempting to slip over a motion for adjournment in order to prevent consideration of the impeachment of the Governor and in the resulting disorder, the confusion and excitement inevitably found in impeachment initiation were created.[13] The disturbance resulting from the vote to adjourn was the match—the powder was there and dry.

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[11]O.J.H.R., p. 26.

[12]O.J.H.R., p. 27.

[13]The Speaker at the next day's session attempted this explanation, which is quoted from the Official Journal (p. 27), and hence is not forbidden even though it contains some of the jazz element of impeachment trials:

> Last night when the motion was put before the House, amid the hubbub and uproar, the machine showed on my desk the same vote which the clerk wrote on a slip and handed to me. I announced that vote. Everyone knows the uproar that was existing at the time and continued to exist, steadily growing worse. While some of my friends were on one side telling me the machine not having been cleared, others were screaming to me to stand pat and hold the vote and that everything was regular, while still others were yelling, running and fighting almost madly throughout the House. The galleries were crowded, the floors were over-run and no condition of confusion has ever existed like it in my legislative experience or observation.

The Speaker continued, placing the blame upon the failure of the voting machine to function properly.

When the House reassembled,[14] there was introduced an affidavit of one H. A. (Battling) Bozeman charging that the Governor had attempted to secure his services to assassinate a member of the legislature, J. Y. Sanders, Jr.[15] Then the House Resolution No. 8, the impeachment resolution, was introduced by four members of the House.[16] This document contained 19 sections. No. 14 was the "Manship" charge, *i. e.*, the Governor's threatening to make known the presence of the editor's brother in an asylum, and No. 19 was based upon the accusation of "Battling" Bozeman. This resolution, declaring that Governor Long was impeached and ordering him to be tried by the Senate, was read in full and declared to lie over.[17]

The Impeachment by the House

The impeachment resolution was considered for the first time on Thursday, March 28, by the House of Representatives having resolved itself into a Committee of the Whole House. A sub-committee of twelve members was appointed to formulate rules and regulations under which Resolution No. 8 was to be considered. The House met again on Monday, April 1, and at that time the sub-committee made its report to the Committee of the Whole House.[18] On Tuesday, April 2, the

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[14]The House voted by 56 to 39 not to adjourn *sine die* after hearing the Speaker's explanation. O.J.H.R., p. 28.

[15]Considered in detail in quieter times this charge would appear to be unfounded in spite of the fact that Mr. Bozeman declared that he made his statement "of my own free will and accord and because I love Louisiana," and ended his charge with the declaration: "All of this statement is facts made by me. Nobody but me. Of course, I expect for Long to deny this," etc. See O.J.H.R., pp. 31–32.

[16]O.J.H.R., p. 33.

[17]It is significant to note that the Governor on the next day, March 27, extended the objects of his original call allowing the Legislature to care for the school children, the blind, deaf and dumb, the charity hospitals, the feebleminded and insane, tuberculars, and all other indigents, sick and afflicted. Note, again, that the object of impeachment was not mentioned. O.J.H.R., pp. 39–40. The Governor's supplement was dated March 22. Only once was the legality of impeachment during a special session brought up officially and the member was declared out of order. O.J.H.R., p. 51.

[18]O.J.H.R., p. 71. The rules provided, among other things, for the form and issuance of subpoenas and the oath and payment of witnesses. The sub-committee was continued as the Board of Examiners.

sub-committee of twelve was instructed to confer with the Attorney General and ask him as to the effect of an early Statute[19] which required persons who wished to accuse a public officer before the Legislature to address a memorial "containing a brief exposition of the acts of such officer which are supposed to be contrary to law," to the House of Representatives, sworn to, and signed, and accompanied by a list of witnesses.[20] The well-reasoned answer of the Attorney General was that the Statute, being passed long before the Constitution of 1921, had no binding force and in no way conflicted with the rules of the sub-committee. The opinion of the Attorney General was adopted by a vote of 67 to 25.[21]

On the next day, the impeachment proceedings got under way, the first witness was called, and the taking of testimony began.[22] Since it is not the purpose to discuss the charges made, and since the evidence presented was in the nature of the evidence brought out before a grand jury, the labors of the House for the next two days need not be noticed. There is no desire even to comment upon the evidence introduced. It is recorded in the Official Journals. There one may find some words occasionally heard, but seldom, if ever before, set forth in print.

On Friday afternoon, April 5, the matter of the duration of the extraordinary session was first introduced, and, after some discussion, the sub-committee agreed to vote upon certain charges the following day in order that an impeachment resolution favorably voted upon could be transmitted to the Senate before midnight of Saturday, April 6.[23]

Witnesses were to be examined by the members of the Board and after their examination any member of the Committee of the Whole House could question the witness. Any member of the Board of Examiners could, at any time, invite any member of the Committee of the Whole to take his place temporarily. Any member of the Committee of the Whole was privileged to introduce witnesses upon six hours' notice to the Board of Examiners. Then followed other rules in regard to spectators, order, etc.

[19]La. Acts (1855) No. 304, p. 370.

[20]O.J.H.R., p. 81.

[21]O.J.H.R., p. 86 (8 members were absent).

[22]O.J.H.R., p. 96.

[23]O.J.H.R., p. 253.

The first of the eight impeachment charges finally adopted was presented to the House on the morning of April 6. After an orgy of speech-making the final vote showed 58 in favor of the charge and 40 opposed.[2] Immediately thereafter the House appointed nine members to serve as Managers to conduct the trial of the Governor before the Senate which was then in session.

The Managers appeared at the bar of the Senate and were received by that body. The charge (The "Manship" affair) was read and the Managers demanded trial and retired.[25] The Senate immediately notified the House of Representatives that "the Senate would take cognizance of the said resolutions and articles of impeachment and proper proceedings would be had."[26]

After this was done the Senate resolved itself into a Court of Impeachment for the trial of Governor Long. No mention of illegality of the impeachment was made in the Senate and no question was raised as to the Senate's right to change itself into a Court of Impeachment which obviously was to sit after midnight, April 6. The Chief Justice took the oath and the oath was administered to the thirty-six members present. The Senate, sitting as a Court of Impeachment, notified the House that it was ready to receive the Managers of the House. The Managers appeared and made a formal charge and then the Court adjourned until April 11,[27] the Chief Justice having appointed five senators to draw up the rules of procedure. This action of the Senate in formally constituting itself a court and adjourning until April 11 is worthy of comment. If the House could not consider impeachment legally during the extraordinary session, the Senate could not transform itself into a Court of Impeachment during that session. Neither is "legislation."[28] If midnight April 6 marked the end of one body, it

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[2] O.J.H.R., pp. 292–4.

[25] O.J.S., pp. 99–101.

[26] O.J.S., p. 101.

[27] O.J.S., p. 105.

[28] The Constitution of 1921, Article IX, §2, reads: "The Senate may sit for said purpose whether the House be in session or not, and may adjourn as it thinks proper." But the organization of the Senate as a court *was before midnight, April 6.* Moreover, the purpose of this provision is to allow the Court to remain in session after the articles of impeachment have been presented and the House has adjourned *sine die.*

should mark the end for the other. The fifteen senators who later blocked the work of the Court made no objection to the Senate's action.

After the Court had received the Managers the House adjourned until Tuesday, April 9. Thereafter, no other business was introduced except for occasional resolutions,[29] and the consideration of Resolution No. 8, the impeachment resolution, was the special order of the day for each succeeding day until adjournment.[30] The members who were the most devoted friends of Governor Long made no challenge of the right of the House to continue after April 6 for inquisitorial purposes. It is certain that at the time the members of the House and the Court of Impeachment did not consider themselves assembled in the form of a "spontaneous assembly."

From April 9 to April 26 the House of Representatives prepared seven additional charges.[31] Governor Long was charged,

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If the House could not consider impeachment charges after April 6, the Senate could not agree to convene again as a Court after that time.

[29]It is interesting to note that until the adjournment of April 6, the Official Journal heads each day's proceedings: "Fifth Extra Session of the Legislature of Louisiana under Adoption of the Constitution of 1921." Not all of the labor before April 6 was devoted to impeachment but numerous bills were introduced and voted upon and communications and resolutions were received. When the House met on April 9 the Official Journal reads:

> Sitting for the Purpose of Investigating Impeachment Charges against Huey P. Long, Governor of the State of Louisiana; duly authorized by Section 2 of Article IX of the Constitution of Louisiana of 1921.

Of course the House of Representatives was swamped with partisan communications. For example: "We are for Huey and want you to give him your full support." (Signed) "The following from Bentley stand squarely behind Governor Long. The people elected you and him to represent them. They did not elect the Standard Oil." (O.J.H.R., p. 74.)

[30]O.J.H.R., p. 352 for April 11; p. 408 for April 12; p. 444 for April 15; p. 451 for April 16; p. 527 for April 17; p. 575 for April 18; p. 646 for April 19; p. 668 for April 22; p. 684 for April 23; p. 750 for April 24; p. 799 for April 25; p. 859 for April 26. It may be inferred from the reading of the Official Journal that the House was not in "Legislative" session after April 6, but was sitting to prepare impeachment charges under Article IX, section 2 of the Constitution, which declares "all impeachments shall be by the House of Representatives."

[31]No. 17 adopted April 11 by vote of 56 to 40;
No. 20 adopted April 24 by vote of 59 to 39;

among other things, with bribery of legislators, misappropriation of public funds, interfering with State boards, interfering with the public school system, requiring undated resignations of appointees, using obscene and vile language, and general incompetence. These charges were voted upon regularly by the House after hearing a large amount of evidence. Commenting upon these charges (II to VIII inclusive), the Chief Counsel for the defense at the trial declared that they "have no more force and virtue in law than if presented by a mass meeting of citizens assembled in the Heidelberg Hotel in the community or city of Baton Rouge."[32] However, it is certain that at that time the members of the House did not consider themselves meeting in the form of a "spontaneous assembly."

The Trial by the Senate

On April 11 the Senate,[33] sitting as a Court of Impeachment, met and considered the rules of procedure drawn up by its special committee.[34] Rule No. 2, as prepared by the Committee, declaring that the Court of Impeachment recognized the right of the House to prepare articles of impeachment after April 6 and declared that there should be no adjournment *sine die* before the House notified the Court that the articles filed constituted all that the House proposed.[35] A substitute was introduced which read, "No article of impeachment offered to be filed by the House of Representatives from and after midnight of Saturday, April 6, 1929, shall be re-

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No. 21 adopted April 24 by vote of 56 to 41;
No. 22 adopted April 24 by vote of 56 to 42;
No. 23 adopted April 24 by vote of 50 to 48;
No. 26 adopted April 24 by vote of 54 to 44;
No. 29 adopted April 24 by vote of 59 to 39.

[32]O.J.S., p. 212.

[33]The Senate had little to do between the time the Legislature met and the time when it formed itself into a Court of Impeachment. The organization of that body into a Court has been discussed above. After hearing the Managers present the first of the impeachment charges the Court had adjourned until April 11.

[34]The rules adopted provided for the time of the court sessions and duration of argument, filing of pleas, attendance of witnesses, order, voting, making the record, the form of process and writ of summons, examination of witnesses, etc. O.J.S., pp. 107–111.

[35]O.J.S., p. 120.

ceived, considered or acted upon by the Senate."[36] This substituted rule was voted upon and rejected by a vote of 23 to 15,[37] and the rule was adopted as first presented.[38] As a result the Court by more than a majority recognized the legality of the charges of the House which were preferred after April 6.

The other articles of impeachment were received in due time[39] and the writ of summons was served on the defendant[40]; then the Court recessed, giving the Governor more than two weeks for the preparation of his defense.

On May 14 the Court convened. The Governor was present and filed an exception and demurrer to Articles II to VIII inclusive, a separate exception and demurrer to Article I, and an answer to all charges. The points (for the defense) made upon the exception and demurrer to the charges prepared by the House after April 6 may be summarized as follows:

(1) The House did not follow the Statute of 1855, which provided for the method of accusation and proof when public officers were to be removed from office by the Legislature. There is no doubt that this Statute was on the books, but the Attorney General of the State had rendered the opinion that it was no longer effective.

(2) That the House of Representatives was without constitutional right or authority to exercise any functions except to legislate and to legislate only on the objects specially enumerated in the Governor's call. And impeachment was not an enumerated object.

(3) That Articles II to VIII inclusive were prepared by the House and transmitted to the Court after midnight of April 6 and since that time marked the end of the session as called, the Articles were illegal and of no effect.[41]

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[36] *Idem.*

[37] O.J.S., p. 121. The "fifteen senators" who later resolved to vote for Long regardless of the evidence introduced.

[38] O.J.S., pp. 124–5. The vote was 22 to 16. However, Governor Long was given the right to demur on account of illegality to the Articles if he chose to do so.

[39] O.J.S., p. 113; O.J.S., p. 135; O.J.S., p. 150.

[40] O.J.S., p. 155, April 27. The sergeant-at-arms reported personal service. O.J.S., p. 178.

[41] O.J.S., pp. 203–206. It is interesting to note that counsel for the Governor claimed that forcing the respondent to trial would violate the Fifth Amendment to the Constitution of the United States. O.J.S., p. 207.

The exception and demurrer to the first charge were based upon (1) and (2) above and upon the very sound reasons that the charge did not declare any impeachable offense, as the threat to expose the fact that the editor had a brother in an insane asylum was not made in discharge of the Governor's official duty and was not violative of the blackmail statute,[42] but was a matter purely personal between the parties.[43]

The question of the legality of the impeachment articles was argued at length by the counsel for the Governor and by the Managers for the House. The Chief Counsel for the defendant took the position that when the House of Representatives convened after midnight of April 6, their assembly was spontaneous and their action was no more effective than if they had assembled in mass meeting. The Managers argued that the limitations on extraordinary sessions were limitations on legislation only and did not apply to sessions of the House when sitting solely for impeachment. After a debate of several hours the question was put to the Court of Impeachment whether or not the exception and demurrer to Articles of Impeachment II to VIII inclusive should be sustained. The Court voted 20 to 19 that the exception and demurrer should not be sustained.[44] A two-thirds vote was necessary only for conviction and a majority vote was all that was necessary to overrule a demurrer. Thus the Court itself, in effect, took cognizance again that the seven articles were legal.

The Court of Impeachment then proceeded to hear argument on the exception and demurrer to Article I. When the vote was taken it was found that the exception and demurrer to Article I was sustained and hence this Article was dismissed.[45] The result of the trial up to the evening of May 15 is simply this: a demurrer to Article I was sustained, which demurrer declared that the charge did not constitute an impeachable offense and also declared that the Article was illegally presented to the Court. But the demurrer to Articles

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[42]La. Acts (1908), No. 110, p. 166.

[43]The answer to Article I was a general denial and the answer to Articles II to VIII inclusive were: "respondent shows that no evidence or proof which can be or may be adduced under or by reason of this Article . . . . will show any conduct justifying or warranting any impeachment of your respondent." O.J.S., pp. 207–8.

[44]O.J.S., p. 243.

[45]O.J.S., p. 264. The vote was 21 yeas and 19 nays.

II to VIII inclusive was overruled, and as a result, the Court still was in session. It had before it the seven remaining charges against the Governor and it was its duty to try these charges. The Constitution of 1921 declares[46] "All impeachments shall be by the House of Representatives, and shall be tried by the Senate . . . . " The Court of Impeachment had no other alternative but to *try* the accused.

The Court recessed until ten o'clock of the next day and it was thought that the hearing of evidence on the seven remaining articles then would take place. The first article contained a rather weak case but the remaining parts of the indictment, especially those articles charging misuse of public funds, intereference with public boards, and general incompetence, *if proved,* would make a serious case against the Governor.

On Thursday, May 16, 1929, the Court convened with all Senators present. Immediately after the Court opened a motion was read, the gist of which is as follows[47]:

> "4. The undersigned, constituting more than one-third of the membership of this Senate, sitting as a court of impeachment, do now officially announce that by reason of the unconstitutionality and invalidity of all impeachment charges remaining against Huey P. Long, Governor, they will not vote to convict thereon.
>
> "5. Further proceeding in this Senate, sitting as a court of impeachment, therefore, becomes ineffectual, vain and will incur a useless cost and expense to the State of Louisiana and will only serve to prolong the turmoil that now exists and will continue to disrupt the ordinary affairs and businesses of our State.
>
> Now, therefore, we move that the Senate, sitting as a court of impeachment, do now adjourn *sine die.*"

This document was signed by fifteen senators. Fourteen senators would be a sufficient number to secure an acquittal. The Chief Justice asked each signer if the signature was genuine and if the signer would vote for acquittal *regardless of the testimony* to be heard. He received affirmative answers from them all.[48] During a short recess the remaining twenty-four senators prepared a declaration deploring the action of

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[46]Art. IX, Sec. 2.

[47]O.J.S., p. 266.

[48]O.J.S., pp. 266–8.

the fifteen senators.[49] Thereupon the Court adjourned[50] *sine die* and the impeachment collapsed.

What became of the remaining articles? If the proceedings in the House were legal, they still exist. The Governor was never tried upon them, but since the adjournment of a Court does not destroy an indictment, these articles technically are still before the Court or Senate.[51]

The Legality of the Impeachment Articles

(A) The Effect of the Statute of 1855

Counsel for the Governor in the exceptions and demurrers to Article I and Articles II to VIII inclusive give as a reason therefor that the House of Representatives failed to follow certain rules relative to impeachment passed by the Legislature in 1855 and later incorporated into the Revised Statutes.[52] The Act of 1855, in part, reads as follows[53]:

> That whenever any person shall wish to accuse a public officer before the Legislature, he shall address the House of Repre-

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[49]O.J.S., p. 269.

[50]O.J.S., p. 270.

[51]In a Florida case, In the Matter of the Executive Communication Filed the 17th Day of April, A.D. 1872, 14 Fla. 289 (1872), it was found that the Constitution of that State provided that the Governor, when impeached, was disqualified until "acquitted" by the Senate. It was held that when the Senate adjourned without deciding the case that it did not result in "acquittal" and that the elected Governor was still disqualified. It was said, p. 294:

> "In view of this record, it is plain, therefore, that the Court made no final disposition of the case, but simply adjourned. The case is, therefore, still pending in that Court. A case is pending if it is not finally disposed of, and clearly here is no final disposition of it by any order of the Senate so doing."

On p. 298, the Court said:

> "All cases of impeachment pending and undisposed of at the preceding session remain on its calendar or docket until the *Senate sitting as a court* enters an order finally disposing of each case."

In the Johnson impeachment trial Chief Justice Chase dismissed the charges not voted upon. (See Congressional Globe, 1868 Supplement, p. 415). Chief Justice O'Neill of Louisiana merely declared the court adjourned.

[52]La. Rev. Stats. (1870), sec. 1738–45; Wolff's Const. and Sts. (1920), p. 878.

[53]La. Acts (1855), No. 304, p. 370.

> sentatives a memorial containing a brief exposition of the acts of such public officer which are supposed to be contrary to law; the memorial shall be sworn to and signed by him who presents it, and shall contain a list of the individuals who can give information relative to the facts set forth, with a notice of the several charges which each individual included in the list can substantiate by his testimony.

This memorial was to be referred to a committee of the House which was to examine witnesses, *"both for and against the accused"* [italics are ours] and report to the House whether the charges were well founded, "in which case the House itself, after having obtained all necessary information, shall decide whether it be expedient to proceed by means of impeachment or by address."[54]

The question whether or not the House of Representatives was bound by this early Statute was raised in the House shortly after the impeachment movement began.[55] The opinion of the Attorney General was asked and he complied to the request, holding that the Act of 1855 did not affect the method adopted by the House in 1929.[56] But counsel for the Governor spent considerable time during the arguments on the demurrers attempting to convince the Court of Impeachment that the method followed by the House was illegal.

It is contended that the Attorney General was correct and that the Statue of 1855 was inoperative.

(1) When the Statute was passed the Constitution of 1852 was in effect which provided for the impeachment by the House and trial by the Senate of the Governor and certain officers.[57] Other important officers were not required to be tried by the Senate and the Constitution left it to the Legislature to say how they should be tried. Article 89 reads:

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[54]In case the committee reported in favor of the accused the adoption of the report by the House was to be sufficient and the accused was to be discharged. Then follow provisions allowing the committee to take testimony by commission as in judicial proceedings of the Parish in which the witness may reside. Costs were to be paid in certain cases by the officer impeached, and the Act closed with the provision that all accusations pending at the time of adjournment were to be prosecuted and continued by the next Legislature.

[55]O.J.H.R., p. 81, April 2, 1929.

[56]O.J.H.R., p. 82.

[57]Art. 86.

> The Legislature shall provide by law for the trial, punishment and removal from office of all other officers of the State by indictment or otherwise.

The Legislature obeyed this injunction with the Statute of 1855 and since Article 89 applied "only to such offences committed by the inferior officers, as would, in the officers enumerated by Article 86 of the Constitution, give rise to an impeachment before the Senate,"[58] it is obvious that this Statute could have no application to the case of impeachment of the Governor.

Moreover, this Article which authorizes legislative action is not found in the Counstitutions of 1879, 1898, 1913, or 1921. As a result, if the procedure set forth in the Statute conflicts with the present method of removing public officers, the Statute can have no present effect. The Constitution of 1852 had a variety of scattered provisions concerning impeachment and removal by address. In the later Constitutions these have been gathered together and grouped in one complete article. The result is that all prior inconsistent provisions are repealed and furnish no basis for legislative action. This is shown clearly in the case of *State ex rel. Young v. Capdevielle,*[59] and *State v. Dunsan.*[60]

In the latter case Judge Provosty adopts the words of the trial judge, who made the following statement[61]:

> Where the Constitution provides a method of removal from office of any officer named therein, we think that is the only way to remove him, and any act providing a different method is unconstitutional.[62]

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[58]State ex rel. Bell v. Hufty, 11 La.Ann. 303, 312 (1856).

[59]135 La. 669, 65 So. 890 (1914).

[60]138 La. 131, 70 So. 61 (1915).

[61]138 La. at 134.

[62]The author disagrees with Attorney General Saint who argues that the Statute was authorized by the Constitution of 1921, Art. 40, which states that the "Legislature may provide by law for the case of removal, impeachment, death, resignation, disability or refusal to qualify, of both the Governor and Lieutenant-Governor, declaring what officer shall act as Governor . . . ." However that Article is not found in the Constitutions of 1879, 1898, 1913, and 1921, although found in the Constitutions of 1864 and 1868. As a result that Article can be considered overruled by the later Constitutions in the same manner that the later Constitutions destroyed the effect of Article 89 (1852). Mr. Saint mentions Art. 89 and in all other respects his opinion cannot be questioned.

(2) We find that the Statute of 1855 is inconsistent with the impeachment provisions of the Constitution of 1921. The Statute does not require the trial of impeached officers by the Senate but declares that the House shall decide "whether it be expedient to proceed by means of impeachment or by address." This is in conflict with the Constitution of 1921[63] which does not allow the removal of the Governor by address. Moreover, the Statute of 1855 declares that in case the committee makes a report favorable to the accused and the report is adopted by the House, "the accused shall be discharged and can never be brought before the Legislature for the same acts with which he has been already charged."[64] This in effect provides for a preliminary trial by the House which hears evidence for the defense. This is in direct conflict with the Constitution of 1921 which requires accusation by the House and trial by the Senate, transformed into a court of impeachment.

(3) The Constitution of 1921 merely states that "All impeachments shall be by the House of Representatives,"[65] and no rules of procedure are set forth. On the other hand, the Statute of 1855 reads, "That whenever any person shall wish to accuse a public officer before the Legislature he shall ad-

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[63]Art. IX, sec. 3. In the case of State ex rel. Bell v. Hufty, 11 La. Ann. 303, 308 (1856) the Supreme Court commented upon the Statute in question shortly after its passage. "The Act of March 15, 1855 (p. 370), relied upon by the appellant, fully recognizes the two distinct but co-existing modes of removal indicated so clearly in the Constitution itself. . . . It provides only for cases where there is personal accusation of some offense against the officer himself. Even then, in section 3, it provides that if the House shall deem it expedient, after the preliminary investigation, it may abandon the impeachment and fall back upon the alternative and milder course, of removal by address."

Although the case did not turn entirely upon the Act of 1855, Judge Buchanan says (p. 313) by way of dictum, "But I do not find in it [the act] any provision to the effect that every address for the removal of an officer must be preceded by those formalities which are therein indicated as essential to be pursued upon a memorial presented to the Legislature, and containing accusations against a public officer."

Further light on the contemporary construction of the Statute of 1855 is found in the fact that the House of Representatives in 1876 impeached the State Auditor, George M. Wickley, on its own motion. In the trial before the Senate there was no objection made in his defense that the Act of 1855 had not been followed. (See O.J.S., p. 229.)

[64]La. Acts (1855) p. 371.

[65]Art. IX, sec. 2.

dress the Legislature a memorial . . . ." The resolution to impeach Governor Long was not preferred in the capacity of "any person" in the nature of a personal accusation but was preferred by members of the House in the form of a resolution which was considered and acted upon by the whole House, and that is the only method authorized by the Constitution of 1921. In the case of *State ex rel. Bell v. Hufty*[66] we find that the Sheriff of the Parish of Orleans had been removed from office by the address of a majority of the two Houses of the Louisiana Legislature. It was objected that the procedure for accusations had not been followed in the House of Representatives. It was held that this act would not affect the right of the General Assembly to bring the action *proprio motu* and it was declared that the Act of 1855 was intended to cover the cases where "individuals" brought accusations against public officers.

(4) Since the Constitution states that all impeachments shall be by the House of Representatives, and shall be tried by the Senate and no rules of procedure are stated, it follows that the provision is self-operative and requires no enabling act to carry it into effect. The rule of statutory construction which would cover this question is stated thus: "Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed."[67]

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[66]See note 63, *supra*.

[67]Coguenham v. Avoca Drainage Dist., 130 La. 323, 57 So. 989, 991 (1912); State ex rel. Murray v. Voorhies, 50 La. Ann. 985, 24 So. 132 (1898); State v. Caldwell, 50 La. Ann. 666, 23 So. 869, 41 L.R.A. 718 (1898); Davis v. Burke, 179 U.S. 339, 21 Sup.Ct. 210, 45 L. Ed. 249 (1900). In this case Justice Brown said (179 U.S. at 403): "Where a constitutional provision is complete in itself it needs no further legislation to put it in force." In the case of Willis v. St. Paul Sanitation Co., 48 Minn. 150, 50 N.W. 1110, 16 L.R.A. 281 (1892) the Court said (50 N.W. at 1111): "If the nature and extent of the liability imposed is fixed by the provision itself, so that they can be determined by the examination and construction of its own terms, and there is no language used indicating that the subject is referred to the legislature for action, then the provision should be construed as self-executing, and its language as addressed to the courts." Also see Taylor v. Hutchinson, 145 Ala. 202, 40 So. 108 (1905); Lyons v. Longmont, 54 Colo. 112, 129 Pac. 198

(5) Also, the question as to the *present* effect of the Statute of 1855 can be solved by the application of certain well-known rules of statutory construction. The written constitution is the paramount law to which all other laws must yield. Invariably it is held by the courts that where an act of the Legislature conflicts with the scope and purpose of a written constitution it is as much invalid as though prohibited by the express letter of its provisions.[68] Moreover, it should be remembered that the technical rules of construction are never applied so as to defeat the principles of government as laid down in constitutions[69] but the fundamental purpose in constructing a constitutional provision is to ascertain and give effect to the intent of the framers.[70] When it was the clear intent of the framers of the Constitution of 1921 that the House of Representatives should have the power to impeach the Governor, it is apparent that a statute of doubtful meaning should not be construed to defeat that end.

There is another general rule of construction which declares there where the words of a constitution have acquired a fixed technical meaning in legal and constitutional history, they will be presumed to have been employed in that sense.[71] The House

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(1913); State v. Duncan, 265 Mo. 26, 175 S.W. 940, Ann. Cas. 1916D (1915); Tilley v. Overton, 29 Okla. 292, 116 Pac. 945 (1911).

[68]Rathbone v. Wirth, 150 N.Y. 459, 483, 45 N.E. 15, 34 L.R.A. 408 (1896); McDonald v. Doust, 11 Ida. 14, 81 Pac. 60, 69 L.R.A. 220 (1905); Gautier v. Ditmar, 204 N.Y. 20, 97 N.E. 464, Ann.Cas. 1913C, 960 (1912). See Flint River Steamboat Co. v. Foster, 5 Ga. 194, 48 Am.Dec. 248 (1848); In re Milecke, 52 Wash. 312, 100 Pac. 743, 21 L.R.A. (N.S.) 259 (1909); State v. Peel Splint Coal Co., 36 W.Va. 802, 15 S.E. 1000, 17 L.R.A. 385 (1892) which hold that a court cannot pronounce a legislative act void because in conflict with the principles of "natural justice." But it is well settled that legislative acts which contravene what the written constitution *implies* are void. Hopper v. Brett, 203 N.Y. 144, 96 N.E. 371, 37 L.R.A. (N.S.) 825 (1911).

[69]Mona Mills Co. v. Wingate, 51 Tex.Civ.App. 609, 113 S.W. 182 (1908); Schubel v. Olcott, 60 Ore. 503, 120 Pac. 375 (1912).

[70]Williams v. Castleman, 112 Tex. 199, 247 S.W. 263 (1922); Western Union Tel. Co. v. Louisiana R. Com., 120 La. 758, 45 So. 598 (1908); Rhode Island v. Massachusetts, 12 Pet. (U.S.) 657, 721, 9 L. Ed. 1233 (1838); Laird v. Sims, 16 Ariz. 521, 147 Pac. 738, L.R.A. 1915F, 519 (1915); Buchanan v. Hicks Co., 66 Ore. 503, 133 P. 780, 134 Pac. 1191 (1913); Fraser v. Brown, 203 N.Y. 136, 96 N.E. 365, Ann. Cas. 1913B, 14 (1911).

[71]Story on the Constitution (5th ed.), sec. 453; see Cooley, "Constitutional Limitations" (8th ed.), pp. 31–3. "But it must not be forgotten,

is given the power to "impeach" and the impeachment procedure is well known, having been followed for a century in this country and being based upon the practice of the English Parliament. The procedure prescribed by the Act of 1855 is not the customary procedure in impeachment. Certainly this Act could not be construed to render illegal the method of impeachment which was followed by the Louisiana House of Representatives. For these reasons the claim that the Articles of Impeachment were invalid because the Statute of 1855 was not followed, cannot be allowed. The chief merit of the contention is that it shows patient industry in searching dust-covered books in the hope of discovering a forgotten law which would win the case.

(B) The Effect of the Governor's Call Stating the Objects of Impeachment

As quoted above, the Constitution of Louisiana reads as follows[72]:

> The power to legislate, under the penalty of nullity shall be limited to the objects especially enumerated in the proclamation of the Governor, or petition and notice, convening such extraordinary session, and the session shall be limited to the time named therein, which shall never exceed thirty days.

It is contended that this provision does not render illegal the consideration of impeachment charges during an extraordinary session even though such action was not an "object" specially enumerated in the call.

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in construing our constitutions, that in many particulars they are but the legitimate successors of the great charters of English liberty, whose provisions declaratory of the rights of the subject have acquired a well-understood meaning, which the people must be supposed to have had in view in adopting them. We cannot understand these provisions unless we understand their history; and when we find them expressed in technical words, and words of art, we must suppose these words to be employed in their technical sense." See Calder v. Bull, 3 Dall. 386, 1 L. Ed. 648 (1798); Thompson v. State of Utah, 170 U.S. 343, 18 Sup.Ct. 620, 42 L. Ed. 1061 (1897); Kreps v. Brady, 73 Okla. 754, 133 Pac. 216, 47 L.R.A. (N.S.) 106 (1912); Rasmussen v. Baker, 7 Wyo. 117, 50 Pac. 819, 38 L.R.A. 773 (1897); Fox v. McDonald, 101 Ala. 51, 13 So. 416, 46 A.L.R. 98, 21 L.R.A. 529 (1893); Maxwell v. Dow, 176 U.S. 581, 20 Sup.Ct. 448, 44 L. Ed. 597 (1900).

[72]Art. V, sec. 14.

(1) This is a limitation of the power to legislate or the legislative power. It does not limit the impeachment power because the process of impeachment is not the process of legislation. "It has been said that impeachment is a heroic remedy, to be resorted to in extreme cases."[73] The power to legislate and the power to impeach and remove the Governor are given separately by the Constitution, although the powers are given to the same group of men.[74] There is nothing in the Constitution limiting the power of impeachment to regular sessions and since the impeachment power is granted in *general* terms it must be concluded that it was conferred upon the House of Representatives to be utilized by them anytime that body is in lawful session.[75] Hence, when the Legislature has been called together and has organized, it may legislate or impeach and remove from office. But the power to legislate in extraordinary sessions is limited. That limitation does not affect impeachment because the presentation of impeachment charges is not legislation.[76] In the Constitution of 1921 the

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[73]State v. Hastings, 38 Neb. 584, 55 N.W. 774, 778 (1893).

[74]Compare Constitution of 1921, Art. III, sec. 1 with Art. IX sec, 2.

[75]It is interesting to note that the first Louisiana Constitution (1812) contained an impeachment article very similar to the present one. Article V in part reads as follows: "Section 1. The power of impeachment shall be vested in the House of Representatives alone.

"Section 2. All impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present."

But the same constitution does not contain any limitation either in respect to the objects or duration of extraordinary sessions. These limitations are found for the first time in the Constitution of 1879 which reads: "Art. 72. . . . . Any legislative action had after the time so limited, or as to other objects than those enumerated in said proclamation shall be null and void." This shows very clearly that the limitation could not apply to impeachment.

[76]In the case of State ex rel. Bell v. Hufty (see note 63, *supra)* the court inferred that the power to remove by address was an administrative power while impeachment was a *judicial process.* The Court said, (11 La. Ann. 309): "The power of removing an officer upon address of the two Houses . . . is not at all in the nature of an impeachment which requires a trial, and of which, in case of conviction, the removal from office is a mere consequence making a necessary part, but only a part of the sentence." See Van Hecke "Impeachment of Governor at Special Session," 3 Wis. L.R. 155 (April, 1925).

"impeachment" section does not contain the word "Legislature." It merely states that all impeachments shall be by the House of Representatives, and shall be tried by the Senate. The power to impeach and remove, strictly speaking, is not vested in the Legislature, but the power to impeach is granted to the House and the power to try the case is granted to the Senate.[77] Simply because the elected mmebers of the House impeach does not mean that the same members are bound by legislative limitations if the powers granted are unrelated.

The Supreme Court of Texas has said in a case similar to ours[78]:

> "On the matter of impeachment the House acts somewhat in the capacity of a grand jury. It investigates, hears witnesses, and determines whether or not there is sufficient ground to justify the presentment of charges, and if so, it adopts appropriate articles and prefers them before the Senate. In doing these things, the House is not 'legislating," nor is it conducting an investigation in order that it may be in a better position to legislate. It is investigating facts in order that it may determine whether one of the people's servants has done an official wrong worthy of impeachment under the principles and practices obtaining in such cases, and, if so, to present the matter for trial before the constituted tribunal. All of this is judicial in character.[79]

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[77]It is not unusual to find non-legislative powers conferred by constitutions upon the parts of the legislative branch of government. An illustration of this may be seen in the power given to the Governor to appoint "by and with the advice and consent of the Senate" (Const. 1921, Art. V, sec. 18). Also it might well be noted that each House is given the right to punish by imprisonment non-members who are guilty of "disrespect, or disorderly or contemptuous behavior" (Const. 1921, Art. III, sec. 11). See also Art. V, sec. 2 and cf. People ex. rel. Atty. Gen. v. Provines, 34 Cal. 520, 535 (1868). In the case of State ex rel. Saint v. Dowling, 167 La. 907, 120 So. 593 (1928–9) the Court said by way of dictum (167 La. at 935): "The real reason why a recess appointee may be confirmed at a special session is . . . because such confirmation is an administrative and not a legislative act, and *it is not necessary, therefore, that such purpose should be included in the call for the special session* issued by the Chief Executive." [Italics ours.]

[78]Ferguson v. Maddox, 114 Tex. 85, 263 S.W. 888, 890.

[79]It may be argued that holding the impeachment process to be judicial in character violates the principle of distribution of powers. Art. II, sec. 1 of the Constitution of 1921 declares that the powers of government are divided into three distinct departments and section 2 provides that no department shall exercise the power belonging to either

Moreover, we should note that legislation requires the authority of the Senate, the House of Representatives, and the Governor. When the House sits for the purpose of preparing impeachment charges, the Senate and the Governor cannot participate in the proceedings and it is not in regular or extraordinary legislative session.

(2) The case of *People ex rel. Robin v. Hayes*[80] is in point. This case involved the validity of a pardon issued by William Sulzer, the elected governor of the State of New York. The question was whether or not Governor Sulzer possessed the authority to grant such pardon. Governor Sulzer had called an extraordinary session of the Legislature, being empowered to do so by Article IV, sec. 4, of the New York Constitution. This section read in part as follows:

> At extraordinary sessions no subject shall be acted upon except such as the Governor may recommend for consideration.

During this extraordinary session the Assembly voted to impeach and suspend the Governor and thereafter presented articles of impeachment to the Senate. It was urged that the constitutional provision set out above resulted in limiting the consideration of impeachment to the regular sessions.

The Supreme Court of New York held that the Assembly was not "shorn of its impeaching power by the summons of the Legislature in extraordinary session." It was said[81]:

> The whole design of constitutional government would fail of protection of popular rights and relief from oppression and wrong against those in exalted place, if there were no independence nor power in the Assembly to make impeachments.

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of the others. But the section continues "except in the instances hereinafter expressly directed or permitted." This has been done in regard to impeachment.

[80]82 Misc. 165, 143 N.Y.S. 325 (1913); aff'd 163 App.Div. 727, 149 N.Y.S. 250, 212 N.Y. 603, 106 N.E. 104.

[81]143 N.Y.S. at 328. The statement was made that "the subject of impeachment, like the power of a legislative body to punish for contempt, has a different character from subjects requiring the action of both branches of the legislature and of the Governor in order that laws might be enacted. The power conferred upon the Assembly to impeach the Governor is a judicial power . . . . The power of impeachment, therefore, being a judicial power of the Assembly cannot be participated in by the Governor or the Senate and therefore does not constitute a legislative subject."

It was held that the impeachment proceedings were valid even though the extraordinary session was not called for that purpose. Therefore the pardon was void.

The Court goes on to say that the Assembly has the right to impeach, and since the Constitution does not state the time, the right might be exercised in regular or extraordinary session or *self-convened.* It is not contended that the House of Representatives of Louisiana could convene itself upon its own motion and impeach the Governor. It is not necessary to assert such a contention, although there seems to be some authority which inclines that way.[82] However, the case does sustain the position of the House of Representatives that while the Governor's call may limit legislative action, it does not prevent the House, being lawfully organized, from impeaching.

(3) Another case directly in point is the case of *Ferguson v. Maddox.*[83] In this case the question was whether or not James E. Ferguson, the elected Governor of the State of Texas, had been lawfully removed from office by the Senate in the year of 1917. It was claimed that, since the articles of impeachment were filed by the House of Representatives during a session of the Legislature called to consider an appropriation for the State University, and since the Governor's call did not authorize impeachment, the removal from office as a result of trial by the Senate was illegal and unconstitutional. The Texas Constitution is similar to the Louisiana Constitution[84]:

> When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

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[82]*Ibid.* pp. 328–9. See Van Hecke, "Pardons in Impeachment Cases," 24 Mich. L.R. 671–3 (May, 1926). The case of Simpson v. Hill, 128 Okla. 269, 263 Pac. 635, 56 A.L.R. 706 (1927) is strong authority for the proposition that a legislature has no *inherent right* to assemble on its own initiative for impeachment purposes. But the Court in that case admitted that "when the Legislature is convened and organized as provided by law" it can exercise inquisitorial powers. See Farelly v. Cole, 60 Kan. 356, 56 Pac. 492, 44 L.R.A. 464 (1899).

[83]Note 78, *supra.*

[84]Texas Const. (1876) Art. III, sec. 40.

The Supreme Court said[85]:

> This language is significant and plain. It purposely and wisely imposes no limitation, save as to legislation. As neither house acts in a legislative capacity in matters of impeachment, this section imposes no limitations with relation thereto, and the broad power conferred by Article 15 ["The power of impeachment shall be vested in the House of Representatives," Art. 15, sec. 1] stands without limit or qualification as to the time of its exercise.
>
> We therefore answer Question 4 in tse negative and hold that the House had authority to impeach Governor Ferguson and the Senate to enter upon the trial of the charges at the Second Called Session of the Thirty-fifth Legislature, though the matter of his impeachment was not mentioned in the proclamation convening it.

These two cases are the only ones reported in which the precise question at issue was considered, although the same result was reached in Oklahoma.[86] It is admitted that the Supreme Court of Louisiana can construe the Louisiana Constitution as it sees fit so long as Federal laws are not violated, and the decisions from New York and Texas have no binding force in this jurisdiction.[87] However, since the Constitutions were similar and the questions raised were like the one facing the Louisiana Senate, these decisions should carry great weight.

(4) The principles of statutory construction as applied to the Constitution of Louisiana favor the contention of the Managers of the House of Representatives. Distinct constitutional provisions are repugnant to each other only when they relate to the same subject.[88] And we have shown that the limitations in Article V, sec. 4, having to do with extraordinary sessions of the Legislature have no relation to the im-

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[85]263 S.W. at 891.

[86]Governor Walton of Oklahoma was impeached by the House of Representatives of that State which met in extraordinary session upon the Governor's call. *This call did not mention impeachment* but was devoted largely to the Ku Klux Klan and the Soldiers' Bonus. Nevertheless, his impeachment was upheld, in effect, by the case of State of Oklahoma ex. rel. Trapp v. Chambers, 96 Okla. 78, 220 Pac. 890, 30 A.L.R. 1144 (1923). This case held that the Legislature being in constitutional session has exclusive jurisdiction over matters of impeachment and its actions are not subject to interference by the courts.

[87]See O.J.S., p. 241.

[88]State v. Butler, 70 Fla. 102, 69 So. 771 (1915).

peachment provision. There is no quarrel between them at all.

Moreover, the impeachment provision is in the nature of a general power, and Judge Cooley has stated[89]: "When a constitution gives a general power, or enjoins a duty, it also gives, by implication, every particular power necessary for the exercise of the one or the performance of the other." The general power of impeachment being given to the House of Representatives, the absence of express limitations upon that power should be noted. It was the intention of the framers of the Constitution to give the House a method of charging executive officers with official misconduct. If the Governor may prevent the impeachment of himself except at regular sessions that would seem to be a limitation upon those general powers. And to decide that the House cannot impeach during an extraordinary session unless such action is stated as an "object" in the official call would in effect give the Governor right to limit impeachment to regular sessions. The burden of proving that Article V, sec. 4, limits impeachment to regular sessions certainly is upon the shoulders of those making such a contention,[90] and unless the contention is backed by good authority it should fail. If it be admitted that the right to impeach is given in order to guard the people against malfeasance in office, it would be natural to suppose that it is to the best interests of the State that the right to impeach be not limited to a sixty-day period once every two years. If the weapon is worth anything at all, its best use is immediate use.

For these reasons it is concluded that any time the House of Representatives is organized in lawful session it should have the right to impeach.

(C) The Effect of the Governor's Call Limiting the Extraordinary Session to Eighteen Days

As stated above, the "power to legislate" is limited during extraordinary sessions of the Louisiana Legislature by two

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[89]Constitutional Limitations (8th ed.), p. 138. See U. S. v. Fisher, 2 Cranch 358, 2 L. Ed. 304 (1805); McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579 (1819); Northwestern Fertilizing Co. v. Hyde Park, 70 Ill. 634 (1873).

[90]See Dillon v. Gloss, 256 U.S. 368, 41 Sup.Ct. 510, 65 L. Ed. 994 (1920); Fraser v. Brown, 203 N.Y. 136, 96 N.E. 365, Ann.Cas. 1913B, 14 (1911).

constitutional provisions. One is the limitation of legislative objects in the call and the other is the limitation of the duration of the session.[91] It has been shown that the limitation as to the objects of legislation should not affect the right of the House of Representatives to impeach during the extraordinary sessions. If that be proved, it is contended that the limitation as to the time of the session does not affect the right of the House of Representatives to continue impeachment after the date set for the closing of the Legislature.

(1) The Texas Constitution declares that no "special sessions shall be of longer duration than thirty days."[92] In the case of *Ferguson v. Maddox*[93] the question was raised whether an impeachment trial by the Senate was legal when it was begun at one special session and completed at another. The court held that the trial was properly conducted and the Senate, sitting as a court, was not bound by a time limitation since it was not sitting for legislative purposes. The court said[94]:

> From the inception to the conclusion of impeachment proceedings the House and Senate, as to that matter, are not limited or restricted by legislative sessions. As has been shown, their constitutional powers with regard to impeachment are not legislative and are not affected by Article 3, Sec. 40. Each House is empowered by the Constitution to exercise certain functions with reference to the subject matter; and as they have not been limited as to time or restricted to one or more legislative sessions, they must necessarily proceed in the exercise of their powers without regard thereto . . . . When the House prefers charges, the Senate, under the mandate of the Constitution, resolves itself into a court for the trial of the charges, and it may and must continue this trial until the matter is disposed of by final judgment. Like the House, it does not cease to exist at the expiration of the legislative session. It is a court and continues such regardless of legislative sessions.[95]

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[91]Art. V, sec. 14.

[92]Art. III, sec. 40.

[93]Note 78, *supra*.

[94]263 S.W. at 891.

[95]The time limitation as to the Senate was not argued in the Louisiana case because the Louisiana Constitution by Article IX, section 2, declares that the Senate may sit for such trials whether the House is in session or not. But, the Texas Constitution does not contain that stipulation, and the Court argues that, since it is admitted that the House is not limited by time in impeaching, the Senate is not limited by time in trial.

If this is sound reasoning, it follows that the Louisiana House of Representatives, when it met after April 6, 1929, for the *sole purpose of impeachment*, was in legal session and the Articles of Impeachment II to VIII were lawfully presented to the Court of Impeachment.

(2) In the preceding section it was assumed that the time limitation was a limitation upon legislative power during a special session. The peculiar wording of the section should be noted again:

> The power to legislate, under the penalty of nullity, shall be limited to the objects specially enumerated in the proclamation of the Governor, or petition and notice, concerning such extraordinary session and the session shall be limited to the time named therein, which shall never exceed thirty days.

The fact that counsel for the Governor drew up separate exceptions and demurrers to Article I and Articles II to VIII inclusive and in their "causes" carefully separated the two limitations leads to the conclusion that counsel for the Governor regarded the time limitation as more favorable to their case than either the Statute of 1855 or the object limitation. In the argument upon the demurrer to Articles II to VIII inclusive counsel placed great emphasis upon the time limitation and compared the House session after April 6 with a citizens' mass meeting.

As can be seen from the wording, the word "objects" directly relates to the subject of the sentence "the power to legislate," and the time limitation relates to the word "session." Can this mean that this latter provision is not a limitation on legislation? Suppose it is a *definite* limitation of the *session?* This could have been made a strong point for the defendant but even then it could be argued that it did not apply to impeachment proceedings regularly begun during the appointed time. But it is contended that both limitations are limitations on the power to legislate, both stand alike, and if one does not prevent impeachment in the extraordinary session, neither should the other.

In the first place, if the main idea of the separate limitations was to make each of different effect they would not be placed together in an ordinary compound sentence. In statutory construction the ordinary rules of grammar are followed.[96]

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[96]See In re House Resolution No. 10, 50 Colo. 71, 114 Pac. 293 (1911).

Secondly, since the Constitution of 1879 the two limitations have been considered limitations of "legislative power." The corresponding clause of the Constitution of 1879 reads as follows[97]:

> Any legislative action had after the time so limited or as to other objects than those enumerated in said proclamation shall be null and void.

The Constitution of 1898 reads as follows[98]:

> Any legislative action had after the time so limited, or as to objects not enumerated in said proclamation, shall be null and void.

Here there is a different wording, but the idea is the same. The Constitution of 1913 has a similar section.[99]

But the Constitution of 1921 finds a still different wording and the reason for the re-arrangement is found in the insertion of the right of the Legislature to self-convene upon the petition of two-thirds of the members. The whole section was re-written in 1921 and the original limitations upon "the power to legislate," which contains sixty-one words, were cut down to their present form which contains forty-eight words. The Journal of the Constitutional Convention which drew up the Constitution of 1921 does not indicate any purpose in the rearrangement of the limitations other than to continue both as limitations of legislative power.[100]

(3) In interpreting this time limitation the matter should be approached from the practical side. The Constitution vests full and complete power and authority in the impeaching

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[97]Art. 72.

[98]Art. 75.

[99]Art. 75.

[100]Pittman v. Byers, 51 Tex.Civ.App. 83, 112 S.W. 102 (1908) holds that where a provision of a Constitution after having been construed by a court of final resort has been reënacted without material change, such construction becomes a part thereof. The court said (112 S.W. at 106): "When language similar to that in the present Constitution is found in former ones, it is presumed that it was intended to use such language in the present Constitution in the sense which had previously been given to it by the courts." While there has been no judicial construction of the clause as found in former constitutions the meaning of the clause was clear and it follows that the constitutional convention in 1921 rewrote the clause with that meaning in mind.

body to do and perform all acts necessary and proper in impeachment proceedings. It would be a most extraordinary and contradictory condition if any authority, except the impeaching body itself, could say when the impeaching body must stop its investigations. There cannot be any limit of time fixed for such a proceeding except by the House itself. No one can say in advance what length of time would be necessary to hear the evidence in detail and prepare formal charges.[101] It might be done in a day; it might require six months. The legislative sessions expire by limitation but the House of Representatives, sitting as an impeaching body, and the Senate, as a trial body, can end their sessions lawfully only when the House has prepared the charges and the Senate, after the trial, has rendered judgment. The impeaching body and the trial body are the exclusive judges as to the time limit of the inquisitorial session and the trail, and the Constitution of Louisiana wisely has not, and could not have, placed any time limit for sessions of the impeaching and trial bodies.

In concluding this section it must be stated again that the impeachment charges as presented by the House of Representatives seem to be valid. The changes in the State Constitution since 1855 and the rules of statutory construction lead to the conclusion that the House was not bound to follow the rules drawn up by the Legislature of 1855. What authority there is points to the fact that impeachment is not legislation and as a result the House was not limited to the "objects" stated in the Governor's call. And since the two limitations were limitations on "legislative power" it follows that the House, so long as it was sitting for impeachment purposes was not bound by any time set by the Governor himself.

Conclusion

It has been stated that the Louisiana Legislature was lawfully assembled and being in regular session that part of the Legislature which was authorized to do so drew up eight impeachment charges against the Governor of the State. These charges were presented to the other House, which was authorized to try the accused on the charges prepared. The Senate became a Court of Impeachment and as a Court voted

[101]The impeachment and trial of Warren Hastings lasted 13 years.

to admit all the charges brought to it, and later overruled a demurrer that the charges brought were invalid. Thereafter, a part of that Court, fifteen senators, swore that they had made up their minds to vote for acquittal *regardless of the evidence,* —something unheard of in legal annals. And then the Court adjourned for no other reason, leaving the defendant at the bar ready for trial, and an indictment still outstanding—another most unusual happening.

Even if it is unjustified, the natural result is a feeling of uncertainty and a conviction in some quarters that there has been political dealing. It is not contended that the Governor should have been ousted—the accused is innocent until he is proved guilty. However, in Louisiana it seems that the *machinery of justice* has broken down and that the constitutional right to try public officers in power has not been effective in this instance.

THE REFRIGERATOR CAR AND THE EFFECT UPON THE PUBLIC OF PACKER CONTROL OF REFRIGERATOR LINES

By WILFORD L. WHITE
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The introduction of the refrigerator car revolutionized the packing industry. To certain men, and their respective companies, have come dominant positions in the industry, but their position has been due mainly to foresight in seeing the importance of the refrigerator car and making bold use of it. Had other equally intelligent men been placed in the same situation as were G. F. Swift, Nelson Morris, and P. D. Armour, the present condition would be relatively unchanged. The situation today is largely the result of the refrigerator car and incidentally the result of dishonest methods of operation, collusion, and monopoly. The relative importance of the terms "largely" and "incidentally" will be suggested in the following discussion.

I. Historical Background

The history of the refrigerator car can be divided into three periods: that of invention, packer monopoly, and growing railroad monopoly. The first extended, roughly, from 1865 to 1890. Starting with experiments by Chandler, Sutherland, and Davis, refrigerator cars gradually took on their present shape and lost their box car aspects with which they started. By 1890, fresh and cured meats, vegetables, fresh fruits, and dairy products were sent long distances with comparative safety.

The second period, 1890–1906, was ushered in with a rapidly increased use of the refrigerator car. For the most part, the cars were owned by users, rather than by the railroads themselves. This type of equipment was highly specialized. Moreover, the railroads were loathe to give up their trade in animals on the hoof, business which was more profitable at that time. In 1890, P. D. Armour built 1,000 cars for the carriage of fruits and vegetables, gradually building up the Fruit Growers Express and the Continental Fruit Express.

Packer control of refrigerator lines carrying a general line of perishable products was the beginning of friction between the independents and the Big Five.

The third period, 1906 to date, represents the growing tendency of the railroads to own and operate their own refrigerator lines. In 1900 the Chicago, Burlington and Quincy organized a separate refrigerator car division. It was so successful that many other railroads followed suit. By 1917, although the railroads had yet failed to provide any beef cars, they owned or controlled over 86,000 refrigerator cars of all types.[1] During the intervening time between 1904 and 1917, the total number of refrigerator cars owned by the Big Five increased only about 1,200 while from 1914 to 1917, they declined about 1,100.

II. Some Problems of the Packing Industry

1. *Packer Ownership of Refrigerator Cars.*—One current problem of the refrigerator car lines affects the shippers of packing-house products, the wholesale grocers, and the other shippers of perishable and semi-perishable farm produce. The Big Four dominate the packing industry through mere size and their control of the beef cars. In 1918, they owned 91 per cent of the beef cars then in use, while the so-called independents held title to 7 per cent more, leaving only 2 per cent for all the other private car lines. At this time, the railroads did not own a single beef car.[2]

2. *Packers Handling "Unrelated Lines."*—During the period 1914–17, there was a rapidly growing tendency for the Big Five to handle "unrelated lines" in their peddler cars and branch houses. In 1918, it was estimated by W. B. Chew & Company, of Houston, Texas, that the packers then absorbed from 60 to 75 per cent of all of the cheese consumed in the United States at that time, 50 to 60 per cent of all the dried fruits, 25 to 30 per cent of the grape juice, and 20 to 25 per cent of both salmon and beans.[3]

The problems of the fruit, vegetable, and dairy producers are now on the way toward solution, so far as packer control

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[1] Federal Trade Commission: *Private Car Lines*, p. 83.

[2] *Idem.*

[3] Taken from a list found in Haney, Lewis H.: *The Case Against the Meat Packers*, p. 7.

of the refrigerator cars they use is concerned. By 1917, 86 per cent of the total cars of this type in use, were operated by the railroads.[4]

The ownership and control of refrigerator cars is of greater importance than their use. The Big Four packers did not become the "Big Four" through the use of refrigerator cars, but through the ownership of the cars which they used. Mr. Bode, Vice-President of Reid, Murdock and Company, wholesale grocers of Chicago, admitted before the committee of the House of Representatives that if the big packers did not control the refrigerator cars, there would be no complaint about their handling "unrelated lines."[5]

3. *Future Production of Animals for Food.*—The future of the packing industry depends upon the future production of animals for food; and animal food is being produced with diminishing returns. Success depends upon enormous acreages of cheap unoccupied lands. Within the United States there have been two forces tending to "box" the packing industry. As demand increases, population increases and grazing land slowly disappears. As grazing disappears, fewer cattle are brought to the market and prices rise. As prices rise, demand drops off, and the advantages of large scale production, a vital force in this industry, grow less. One of the most uneconomical uses man makes of land is that of grazing. For example, one acre of land will ordinarily produce 3,100,000 calories if planted in corn but only 673,000 if used for the grazing of hogs. This total falls off to only 130,000 for cattle.[6] One has only to turn to China, to realize the direction of present tendencies in this country, for there has been a steady decline in the consumption of beef, for example, in the United States since 1890 when it totalled about 88 pounds per capita. The estimated per capita consumption in 1920–21 is given as 57 pounds.[7] This may explain why the packers have been interested in adding "unrelated lines," for as early as 1906, J. O. Armour wrote, "In the very nature of things the prices of meats are bound to rise rather than lower;

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[4]Federal Trade Commission: *Private Car Lines*, p. 83.

[5]Report of Hearing, House of Representatives: *Railroad Companies and Private Car Lines*, p. 8.

[6]Federal Trade Commission: *Meat-Packing Industry*, Part I, p. 397.

[7]Clemen, R. A.: *American Live Stock and Meat Industry*, p. 255.

the contraction of the range, as I have already explained, is sure to continue and also sure to increase the cost of producing beef; the price of corn lands is steadily and inevitably rising, and this also, means the increased cost of raising and feeding meat animals of all kinds."

III. Problems of Packer Control of Refrigerator Cars

1. *Secrecy.*—In their advertising, the Big Four packers are trying to gain and are succeeding in gaining the confidence of the public. And yet, there is an undercurrent of secrecy too intangible to define, although too evident to ignore. The older school of packers was indifferent to public opinion. Many believed that they would not have been so reticent had they not had a skeleton in their office closets, the skeleton being, in this case, exorbitant charges for the services which they rendered. Just to what extent this is true, in general, is a matter, today, of conjecture. The 1925 Yearbook of Swift and Company gives a substantial part of the financial history of that company for the past 29 years.[8] Over this period, the average earnings were only 13.15 per cent of capital stock and 9.69 per cent of the investment. It is true that capital stock mysteriously increased every time the net earnings of the preceding year reached limits inviting criticism, but stock watering is even yet a rather common phase of financial administration and it is necessary, in considering the ethical side of such a question, to measure men with yardsticks of their own day. While manipulation of these published figures is possible, it can be presumed that they represent the conditions of the company as a whole and as such do not suggest the exorbitant profits common in some of the other industries.

There is some justification, however, to feel that the packers are not yet ready to take the public entirely into their confidence. As late as 1919, a member of the Interstate Commerce Commission complained that the ratio of capital stock to net earnings was not available,[9] although the packers were then proudly showing that their earnings on *net sales* were "pitifully" small.[10] This willingness to show their profit on sales, and not on capital stock, well indicates their general

[8]Swift & Company, 1925 Yearbook, p. 33.

[9]Federal Trade Commission: *Private Car Lines*, p. 103.

[10]Swift & Company earned 1.15 per cent on net sales in 1919.

attitude. It is again illustrated in the lectures delivered before the Institute of American Meat Packers, which lack a frank recognition of conditions as they are and an offer of a way to better times.[11]

Earnings of private car lines are even more elusive. In 1906 Dr. L. D. H. Weld had to content himself with generalizations to the effect that packer-beef cars earned about 20 per cent on the original investment and that fruit refrigerator cars earned around 10 per cent.[12] While reports have credited the various Armour lines with enormous profits, the Federal Trade Commission could figure only 9.7 per cent in 1912, based upon capital invested. The 1913 figures dropped to 6.8 per cent while the 1914 average was only 8 per cent.[13] While it is true that these figures are not inclusive nor the periods extensive, it probably is true that present profits on refrigerator cars reckoned upon the most liberal basis, are not exorbitant, even though they were high during the '80s and '90s.[14] However that may be, all private car owners have the advantage of being paid on a mileage basis for the use of the cars by the railroads; the railroads themselves only receive remuneration per diem, from the other common carriers. Adjustments have been attempted, but at the present time, a packer car will earn more than a railroad car, other things remaining equal.[15]

2. *Exclusive Contracts.*—In the next place, it has been alleged by many that the packers have a strangle-hold upon independent shippers using refrigerator cars, through their exclusive contracts with the railroads for car service and their ownership of icing stations. The Federal Trade Commission has been claiming and has offered evidence to substantiate its point that these exclusive contracts killed competition between private-car lines, and that as a result, the shippers were at the mercies of the members of that contract, not only as to charges but as to service, and that their very life was held in the hands of these monopolies.[16] On the other hand, Ar-

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[11]See *The Packing Industry*, University of Chicago Press, 1924.

[12]Weld, L. D. H.: *Private Freight Cars and American Railways*, p. 145.

[13]Federal Trade Commission, *op. cit.*, p. 110.

[14]Weld, *op. cit.*, p. 137.

[15]Federal Trade Commission, *op. cit.*, p. 145.

[16]Federal Trade Commission, *Private Car Lines*, p. 168.

mour & Company has introduced evidence to show that under an exclusive contract, it offered more regular and continuous service to the shippers.[17] This point of view is possibly borne out by the application of the California Coöperative Canneries' petition to have the Consent Decree set aside. In another instance, a group of Georgia peach growers, after using Armour & Company cars, desired lower rates and the contract was not renewed between the Georgia Central and that private car line. Although several others entered the field, the railroad, petitioned to "sign up" again with the packing concern, finally did so.[18]

The fundamental objection to such an exclusive contract was that under such an arrangement, icing charges were almost invariably raised much above those charged by the railroads. Because of the lack of organization and proper facilities, the original charges were very high. Many of the railroads which attempted to furnish refrigerator cars, however, often made no charges for icing and those who did, charged a nominal sum. An example explaining how this worked out is found in the case of the Pere Marquette, operating in Michigan, which prior to 1900 made no charge other than the regular railroad rate for handling Michigan fruit. From 1900 to 1902, the road charged $2.50 per ton for icing. In 1902, a contract was signed with the Armour lines and immediately the charges were raised from about $15 to $45 per car; $7.50 to $25; $20 to $50; etc.[19]

Complaints immediately reached the Interstate Commerce Commission, which started investigations. In defense of their policy, the Armour people, after explaining certain differences in the size of cars, more adequate facilities, etc., put a number of growers on the stand who said that they were "satisfied to pay higher charges in order to insure the well-nigh perfect service afforded, than to pay the lower charges, and have their fruit reach market in ruined condition."[20] Some stated that their net profits per car were higher after paying the increased charges than before, because of the better service. While there is proof to be found throughout the various controversies

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[17]Armour: *Packers, etc.*, Chapter IV.
[18]*Ibid.*, pp. 234–243.
[19]Weld: *op. cit.*, 117.
[20]*Ibid.*, 119.

that the railroads do not, even today, afford as continuous and regular service as do the private car lines, still the doctrine advanced by the packers that any charge is justified as long as a majority of the shippers make more money under it than under the other system of lower rates and poorer service, cannot be entirely justified. While service is very important, no firm has a right to use it as a lever in charging *all* the traffic will bear. The most friendly writer can do nothing less than say that Armour & Company lines charged more, in their heyday, than even their superlative service deserved.[21] While this is not so important a consideration now, some shippers are still filing charges from time to time.

3. *Mixed Commodity Classifications.*—Mixed commodity classifications, and abuse in their use, is probably one of the two most important present problems. Such a complicated subject can only be treated here in enough detail to point out the glaring inequalities. These arise from two sources. In the first place, car-load rates for fresh meats are based upon a minimum of 21,000 pounds; but in order to secure this rate, in the second place, only 3,000 pounds need be fresh meat while the remainder can be composed of any products handled by the packers and listed in the same classification. Through successive tariff arrangements, which are published and open to all, a number of unrelated products have been placed in this group, and if shipped with the minimum of 3,000 pounds of meat, take the same rate as packing house products which are listed in the fifth classification. Otherwise, most of them are grouped with other related grocery products which are listed in the third rate classification.[22] While such an arrangement is open to all, few others than the packers can take advantage of it. The wholesale grocers not only must pay a higher rate per thousand pounds, but must ship a higher minimum of 36,000 pounds in order to secure car-load rates.[22] Obviously, over a period of time, such conditions operate in discriminating fashion against all shippers, but not against the packers.

This whole problem is intensified and further complicated by the additional service which the packers demand and get.

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[21] *Ibid.*, pp. 119, 120, and 130.

[22] Federal Trade Commission: *Meat-Packing Industry*, IV, p. 77. There are many conflicting statements on this point. Also see *Interstate Commerce Commission Reports*, Vol. 62, pp. 390–401.

Originally, they could and did force unusual service out of the railroads through the use of the then usual methods. As a result of this heritage and the fact that fresh meats demand expedited service, packer cars are handled with the greatest attention and speed possible. A station agent, for example, must make reports direct to the packers on cars which pass through his hands, and he is held responsible for any complications or delays. In this way, the larger packers can get their meat to market more quickly than can their independent competitors. Furthermore, packer refrigerator cars can reach many parts of the country which are not accessible to any others. In Illinois, for example, the Illinois Central offers refrigerator-car service to independent shippers on perishable goods destined for only 33 of the 500 cities along its line.[23] The packers, through their own system, can reach all of these. Thus, they can cover their territories much more thoroughly.

4. *Handling "Unrelated" Products.*—The real problem arises, however, in the use of the peddler cars by the packers to distribute "unrelated" or grocery products. In this way a small grocer in an out-of-the-way town or village can be sold "unrelated" products on the basis of quick and regular service, even though the prices may be as high as, or even higher than those quoted by some other agency which cannot guarantee immediate shipment and receipt. These other agencies have three possible methods of delivery by common carrier open to them: namely, box cars, independent or railway-owned or controlled refrigerator cars, or independent peddler cars. Ignoring the first two, which are obviously incapable of giving service comparable to that offered by the packers, what about the third? While the packers claim that any one else can adopt the peddler-car method of distribution, there are reasons why such procedure is almost impossible. Setting aside for the moment the handicap of higher minimum weight and classification, "independent" packer or refrigerator cars would not be given the service which those of the Big Four receive. Assuming, too, that a large wholesale grocer, for example, could get cars for his peddler routes (if he did not own them)

[23]House of Representatives Report: *Railroad Companies and Packer Lines*, pp. 9, 10.

from the railroad whenever he needed one or more, the packers would still have the advantage. Assume that a packer and an "independent" car start out together. A meat car must receive every consideration, even to the point that a freight train will wait until it is unloaded. An "independent" car, minus the meat, would be shunted upon a siding, if the loading took too long, to be picked up by the next train. If the two cars contain equally small shipments for a village with a half-time agent, he would be ordered to stay on duty until he received the packer car goods, but if he were not there when the other shipment arrived, it would be carried on to the end of the division and later returned.[24] In actual practice, there appear to be other real advantages which accrue only to the packers.[25] And if this independent has to ship in less than car-load lots, he is further handicapped through reworking and transshipment.[25]

5. *Vested Interests.*—Originally, the packers had to own their own cars. The railroads consistently refused to buy any, with the result that if refrigerator cars were to be used by the shippers, either they had to furnish them or rely upon some third party. While this can be offered as a valid reason for the conditions thirty and possibly twenty years ago, it is not obviously equally valid now. The argument of vested interests, which is greatly over-worked, is not entirely applicable here. All parties losing ownership of their cars would be compensated, if some new plan were devised upon this basis, and their legitimate business profits would not be affected. Perhaps another term, vested rights, might be applied to the case. Here again, however, the United States Government has gradually adopted the theory which in its spirit declares that no individual firm nor industry has any right to carry on any operation which, in the long run, is not beneficial to the public at large. Generally speaking, business accepts this not only as inevitable, but as good practice. The present problem is not to justify the theory, but to prove that conditions are contrary to the spirit of that theory.

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[24]See testimony of Mr. Bode, given before House Committee: *Report* (1919).

[25]*Idem.*

Of all the meat which Americans eat, less than 5 per cent is frozen.[26] Even today, fresh meat does demand efficient and regular service. Not even the bitterest opponent of the packers would deny this. The packers claim the only way that they can get the kind of service which they must have, is to own and control their cars themselves. To them, everything else is subservient to this problem. This same service which is so necessary in the handling of meats, is equally important in the case of other perishable products. It has already been indicated that many of the shippers of fruit and vegetables are willing to pay high icing charges to get the services which only the packers have yet offered them.

IV. Basis for Solution of Problem of Packer Control

The basis for the settlement of this problem of packer ownership of refrigerator cars must obviously be, equal opportunities for all shippers, from the time refrigerator cars are needed until the time their contents reach their destination and are taken out of the car. This does not mean that the shipments of unequal size should pay the same rates but it would mean that under similar circumstances, cars would be equally available to all. Minimum weight, rates, and service would be the same to all.

The writer feels that this is not possible so long as some shippers own and operate their own refrigerator cars while others have to rely upon the railroads or third parties, these latter occasionally their competitors. Congress cannot give the Interstate Commerce Commission full control over private car lines, according to the 1912 ruling, but it has had nominal control since 1906 through their relation with the common carriers. Its best efforts have not been able to eliminate all the inequalities of fair competition. Even in the case of the railroad cars, over which it has full control, it has not been able to allocate them properly and produce the service which was demanded by some of the shippers.

If then, the packers, among others, should give up ownership not only of their private refrigerator lines, which they are already doing, but also of their beef cars, which only make

[26] *The Packing Industry*, p. 83.

up about 12 per cent[27] of the total number of refrigerator cars, who shall own them? Who shall operate them?

V. Possible Solutions

1. The Federal Trade Commission recommended in 1919, that all such cars be taken over by the government and administered as a government monopoly. Without further discussion, the writer is going to pass this by as untenable.

2. Some believe that all private car lines should be abolished and that the Interstate Commerce Commission should force the railroads to buy and operate enough refrigerator cars to handle the traffic over their lines. There are at least two handicaps in the way of such a solution. In the past, many lines, owning their own refrigerator equipment, have found difficulty in meeting the demands of the shippers promptly and completely. This is not such a problem for the Santa Fe which has continuous use for this type of equipment as for the Georgia Central, for example, which needs several thousand cars in the summer to move the peach crop but has little use for them during the rest of the year. Railroads have also had difficulty in offering the service demanded. This may be due to the lack of ability to provide sufficient facilities, the relative unimportance of this phase of the business, or mediocre management. Even in the case of separate corporations, controlled by individual railroads, proper service has not always been maintained.

3. As an alternative for all of these proposals, the writer suggests a separate corporation owned by all or a large part of the railroads using refrigerator cars, which would be under the supervision and can be directly regulated by the Interstate Commerce Commission. This is no new solution. In 1902, *Railway Age* proposed it, and in 1906, L. D. H. Weld proposed it as one of four possible ways out of the dilemma. He wrote, "This suggestion to pool the equipment and handle it through a central clearing house [comparable to the above proposed plan] leaves little to be desired from an economic point of view, but is somewhat in advance of the times."[28] If he were writing on that subject today, he would probably,

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[27]Federal Trade Commission: *Private Car Lines*, p. 83.

[28]Weld, *op. cit.*, p. 175.

in all honesty, feel justified in making that same statement. His two objections seem rather peculiar, at present, however: vested interests, by which he probably means to infer what the writer has tried to suggest by vested rights, and high profits. His last point is that the packers would not consent to the change as long as they were making such high profits on their cars. Further comment here seems superfluous.

This solution is not fool-proof and will not provide 100 per cent efficient service. Should it be put into effect, the packers *may* be able to influence certain officers of this new corporation in their favor. The writer *does* claim, however, that under new ownership, and Interstate Commerce Commission supervision, theoretical inequalities will be eliminated and human problems reduced to a minimum. No plan can be perfect as long as human nature is not perfect.

Some may feel, that in order to be logical, a further qualification should be placed upon the operation of refrigerator cars. That is, only meat and other perishable products should be shipped in them. Theoretically, this is probably true. It is uneconomical to ship non-perishable merchandise in refrigerated cars. But sometimes practice must part company with theory, or rather, there may be enough intangible advantages to an uneconomical method to make it advisable in practice. Such seems to be the case in this instance. The real advantages of peddler cars have been made apparent. Such cars cannot often be completely filled with fresh meats and other strictly packer products. Such service as this method offers to the small merchants in the smaller cities of the United States may well be worth the slight loss occasioned by unnecessary refrigeration. As pointed out before, the problem is not one of use, but of ownership.

Finally, what would be the result of this solution, once it were put into effect? No shipper would own a single refrigerator car in which his own products could be shipped. This giant corporation, owned by the railroads but similar in many respects to the Pullman Company, would be large enough and would handle enough business to provide adequate equipment and facilities equal to the best the private lines can now offer. Cars would be allocated with the entire United States as a unit.

That each car could earn a higher mileage rate would help to reduce costs. Rates would be uniform for all shippers demanding the same service. All shippers would do business under the same mixed rules and obtain the same service. While there would be economies open to the large shippers, largely because of their greater use of car-load shipments, there would be no inherent disadvantages placed upon the non-packer.[29]

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[29]Incidentally, separate control of the branch houses of the Big Four packers is not proposed by the writer. That is an entirely different problem.

THE STRONG BILL

By M. K. GRAHAM

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The importance of the stabilization of the value of money is being increasingly recognized by students and theorists and the world's practices are just now aiding stabilization very considerably. Yet the law lags. The aid is conditioned on and subject to bankers' personal views, interests, and predilections. Their future course is uncertain and personal.

It would seem that no sensible central gold standard banker would object to being instructed to maintain the dollar on a purchasing power parity with gold and to coöperate with the other central banks to prevent unnecessary fluctuations in the value of gold; to give his reasons for action from time to time as seemed proper; and to try to find out all he could about the subject of stabilization. These instructions seem innocuous enough, yet they would probably have satisfied Mr. Congressman Strong, author of House Bill 11806, 1928. But for some reason, the Federal Reserve Board does not seem to want instructions to prevent undue fluctuations in the value of gold.

Governor Strong was the star witness in the 1927 Hearings, but in 1928 he was in poor health (and he has since died, to the extreme regret of every one) so a successor was found in Dr. Miller, member of the board since its inception, and now Vice Governor. Dr. Miller is an economist by early training, having formerly taught economics. But, as is so often the case with banker-economists, he has no use for, nor sympathy with, stabilization. Being asked, "Speaking of a fall in prices, with prosperity in commerce, industry, and agriculture and steady employment, would you object to, welcome, or overlook that fall in prices?", he answers: "I see no harm that it would do except in certain debtor and creditor relationships and I do not regard these as so sacrosanct or so important, so essential to the good functioning of the social and economic system that I would glorify them and deify them as the one and conclusive test of good monetary policy."

Dr. Miller probably says more than he means to at times. For example, he says that the Strong Bill "proceeds upon two assumptions; and I use the word 'assumptions' advisedly.

One of these assumptions is that changes in the level of prices are caused by changes in the volume of credit and currency; the other is that changes in the volume of credit and currency are caused by the Federal Reserve policy. Neither of these assumptions is true to the facts or realities. They are both in some degree figments—figments of scholastic invention that have never found any very substantial foundation in economic reality and less today in the United States than in other times." Clearly, Dr. Miller overlooks the facts that without currency and credit there would be no money prices and that money prices are very largely credit phenomena. Also he overlooks the further fact that currency and credit are the stock in trade of a central bank, such a bank being the fountain head of that margin of credit which rules both the volume and the value of credit. Is not this margin of credit controlled and manipulated by central bank policies?

Elaborating this thought further, Governor Young asks, "How can 500 millions of Federal Reserve assets used in the open market control the total of all United States credit, 200 billions?" Of course the answer is that most of the 200 billions of credit is in use continuously, the credit system needing the greater part of this sum with which ordinarily to function. It is the surplus credit which is fed into and withdrawn from the system from time to time which tends to fix the price of the whole and should be controlled. Those interested in this phase of the subject, who wish to pursue it further, should read Prof. Joseph E. Shafer's "Explanation of the Business Cycle" in the December, 1928, *American Economic Review.* And yet Governor Young says "We cannot do it." If the board really has not the power now to control this surplus credit, let them ask for the additional power to change from time to time the required minimum deposit reserves of the member banks as was done by Congress in 1913 and again in 1917. They then certainly could no longer claim lack of power.

Most certainly, some Congressman will interpose here that this would be too much power to grant to any men, such power being the power to destroy. To which, one must patiently repeat in reply that, if to this power were added the instructions to do all possible to prevent undue fluctuations in the value of gold, the central authorities would then, with this added power, still have much less than they have now for they

have *no* limitations of, or directions for, the great powers they now have and use.

But one might say that their control of the discount rate, which must be only "for the accommodation of commerce and business" is definite instruction and limitation. But concerning this Dr. Miller says: "The phrase 'accommodation of commerce and business' has always struck me as one of those rare inventions that occur occasionally in American statesmanship. Whoever was the author of that phrase, did a magnificent thing. It is great language. The word 'accommodation' is susceptible of the wisest interpretation and reaches to the noblest of economic purposes." And, being so, it is susceptible of interpretations which may be the antithises of these wise and noble ones.

There can be no doubt that the board would have less power after having been instructed to stabilize, as far as possible, even with added powers, because they would then be directed to follow a definite, ascertainable course and their success or failure could be accurately charted, whereas now they have no intelligible instructions or limitations, nothing but this vague expression, "accommodation." No one, now, can say of them that they have failed to do as they were told to do, regardless of what they may do.

Their next objection is that by reason of improved methods of production the costs of goods might be lowered, with other factors constant, and that unless this were reflected in a lowered price level injustice would result. Let us examine this claim. Under certain given conditions, assuming a falling price level, dollar wages remaining constant, labor would profit, getting the same number of larger dollars. The producer might lose nothing since he would get fewer but larger dollars. The creditor would profit, since he would receive larger dollars than he loaned—and this creditor is always the star boarder in this house of mammon. The debtor would certainly lose, since he would pay larger dollars than he borrowed. But we have seen that Dr. Miller is not especially interested in the debtor.

Now let us assume lowered costs, the other factors being, as before, constant, with a stable price level. What would result? Labor would get the same number of the same size dollars. Some producers would receive fewer, some would receive more dollars of the same size. Should the lowered cost producers

receive fewer dollars, this would be because they produced too much of their article and of course, while their profit might be no more, their costs would be less. If they could control their output, they would benefit. Neither the debtor nor the creditor would be affected. It seems to follow then that more classes of people would be treated justly with a stable price level than with a falling one, not to mention the slowing down of business which is supposed, inevitably, to follow a falling price level. Although under the assumptions, business was supposed not to slow down, yet even though it may not do so at once, the reactions are such that it will almost certainly slow down after an interval.

Since it is admitted that a higher price level can be controlled, and prevented, it is beyond the point—anyway a higher price level favors the debtor. The Federal Reserve Board further objects to the bill because the people would be led to expect more of them than they could perform and would be disappointed and, perhaps, resentful. The people never expect anything as long as they are doing fairly well, as they probably would be doing with a stable price level and particularly if, in addition, other steps (as in *The Road to Plenty)* were taken to smooth out the business cycle. What did the people know or care about the reduction of the bank deposit reserves in 1913 and 1917? Nothing. And yet these were pregnant with meaning to those who could interpret. Both of these, of course, and contrary to the rule, favored the debtors; but ordinarily debtors get the worst of it for debtors, as a rule, are either incompetent or else they are busy with affairs. As a class, they are inarticulate. The thinking of the world seems to be done by the creditor class, since these are the ones with the leisure and the inclination to think through to the end. Hence the debtors probably will never be aroused if conditions remain tolerable. It is therefore to the interest of the financial powers to keep conditions tolerable for the people. Here is a curious situation. It will be remembered that when a deposit banker makes a loan or an investment he thus creates a deposit for the system and that this deposit currency is the real money of business and commerce. We have learned that the value of money changes, more or less, inversely as the quantity thereof changes. Hence these deposit banks manufacture money and thus change the value thereof. Under our United States Constitution, the

United States Government is given the sole right to coin money and to regulate the value thereof; and what it can do itself in this respect it can delegate to the private bankers, with such restrictions and control as may seem advisable.

So far, so good. But the same United States Constitution continues to the effect that no state shall have the right to coin money, emit bills of credit or make anything but gold or silver a legal tender for debts; and what a state cannot do itself it cannot delegate to others. But the state banks and trust companies of deposit which make loans and investments are thus coining this deposit currency and are thus changing the value of United States money. It would seem to follow that these same state banks and trust companies of deposit are not legally chartered, and that they should watch their step, since they may not be nearly so independent of Federal control as they have supposed themselves to be. Of course this is new thought, but first practice, then theory, then law. This is the statement of the theory.

But why drag in this skeleton of lack of authority of the states to charter deposit banks? Because much has been said about state banks' withdrawing from the system and of national banks' exchanging their charters for state charters if the central bank does not do so and so. Of course, national banks have to take their medicine as it comes as long as they remain such, and now it seems that it will be well for the state banks to do the same thing. When this matter is better understood, even though the central bank be given the power to change the member banks' deposit reserve requirements at will, as a measure of control, or to do anything else which Congress may authorize them to do, there need be no fear of the system's being left without member banks, since there would be no other place to go where valid charters could be issued.

Finally, the Federal Reserve Board says that the gold standard has practically re-established itself the world over, and that it prefers to trust to its automatic action in keeping the world's currencies on a purchasing power parity. In saying so it quietly ignores the fact that the gold standard is no longer automatic and that man's interfering hand is everywhere in evidence—in his bank credits, in his changing reserve requirements, in his bank rates, in his open market operations. To realize that one has but to recall Mr. McKenna's

statement that, "There is still scope under it for exercise of discretion by the central institution" and Mr. Goodenough's statement that, "At the same time money rates form an important factor in regulating prices in this country." And to this one must add Dr. Miller's "Let us wait and see how the gold standard works in the next few years. I do not mean to give blind adherence to the old principles of operation. I should expect it to be tempered in its application, now and then, here and there, by a very informed discretion and at times by a certain degree of courageous interference." All of this means a managed gold standard, controlled by the Federal Reserve System, and without conditions or limitations.

Those who still doubt should read this recent pronouncement by Hon. R. McKenna, that says: "Now as to the relation between changes in gold stocks and movements in price levels. . . . These facts, taken together, make a pretty patchwork of monetary inconsistencies. They show what should be very obvious, but is by no means always and everywhere recognized, namely, that the gold standard is in no sense automatic in operation. This appears to be a grave disappointment to some people, but in fact it should be a cause for rejoicing that the gold standard can be and has been usefully managed, or controlled." These are the words of a banker whose reserves were lower than usual and whose people are being pinched by the gold standard. With business already poor, the central Bank of England had been forced to raise its discount rate. England invented the gold standard. Circumstances may force her to work improvements in it, and, with stabilization, gold reserves will be pretty much only window dressing, for a stable money is sound without much gold backing.

From all this it would seem to follow that the dollar's value can be held to a purchasing power parity with gold; that undue fluctuations in the value of gold should be controlled by central banks, in so far as possible; that those in authority should be given the power to do this and then be instructed accordingly. When they are so instructed, they will not take the price level as their sole guide and discard all other guides; but rather, if they are wise, they will retain all of their present use of production, distribution, and employment data, etc., and will be guided accordingly. The doctor does not give medicine or operate at once, but rather he examines the

patient, using his several instruments, and only then does he prescribe or operate. In the same way the Board should use all of the data that they have and can get.

Before closing, it may be well to consider briefly the Board's relationship and duty to the stock market. In time, the Board will come to see that their trying to regulate the price level of stock prices is much like their trying to regulate the prices of individual commodities or of groups of commodities would be. It is not their special business to do so. Of course, they should not hesitate to advise and counsel. They should be quite free with these in their control of stock-market vagaries but they should rely largely upon these and reserve their other powers for the general purpose.

It is generally conceded that central bank credit should not be used for speculative purposes, especially in stock-market speculation, because of the inherent dangers. Bank credit is not lost when it is issued for speculative purposes. It continues to exist and may pass therefrom for one legitimate use to another. The trouble here is that this original credit is not self-liquidating like most business loans should be, and thus it may become frozen. We may go farther and say that it will become frozen if it is permitted to become too attenuated. To become frozen simply means that the man who finally owes the money to the bank has an over-valued stock or bond as his collateral. Of course, he cannot pay with this. The proceeds of the original loan have passed on to the seller of the stock. Hence purely speculative loans are frowned at.

But while good bankers agree with this as long as general savings and accumulations exist and can be used for such purposes, the use of bank credit in speculation can hardly be distinguished and identified, and its moderate use therefor can be prevented only with difficulty and at unnecessary risk, for, while trying to control the stock market, commodity prices may be adversely affected. Of course, stock market dissipations and excesses carry their own corrections and cures just as Florida land booms and special booms of all kinds do. If the stock market is not permitted to absorb more than its share of credit and savings, its ups and downs will have only a local effect; and big business will shear its fleeces periodically as it has always done. But the stock market should not

be permitted by the member banks, for their own safety, to absorb more than its share of bank credit, for there are ebbs and flows in bank credit and it is that surplus, as we have seen, above the ordinary level of credit and currency which must be kept liquid. It is the control of this surplus, as we have seen, which gives the central bank control over credit.

Speaking as one of those who believe in stabilization, I might add that we have no desire to be radical, and that we believe in the central-bank principle, even to the extent that we are willing to add to their present powers, if necessary. Being their friends, we certainly shall not demand the impossible in execution. We realize that what we are now asking for is a mere gesture to indicate which way they are headed. And it is not the opening wedge at this time, either; for we feel that when this shall have been written into the law a very great step forward will have been made in principle. If the principle is good, when once recognized, it will grow of itself.

As a rule, the anti-prohibitionist who had used liquor for years is still an anti. So the old-fashioned gold-standard man of middle age or more is likely to remain one. Stabilization has to do with money and money is controlled by bankers. Bankers, as is natural, are led by the big bankers and the big bankers are more or less related to and tied in with the stock market. The stock market thrives on the uncertainties of the present regime—such things as Mr. McKenna's "intelligent anticipation" and Mr. Goodenough's "speculative purchase of sterling in anticipation of a further rise," etc. While the ordinary bankers' interests are with stabilization, they are afraid or averse to break away from their traditional leaders, whose interests may be quite different from their own. So while stabilization is of high importance to the world's happiness and welfare, it may not become our stated policy until a new generation can be taught in the schools—as was the case with prohibition in the United States and with militarism in Germany. Certainly the rising generation are better informed than were their fathers; and when these, in the natural course, come to fill the executive positions in banking and big business, enough of them may be wise enough to realize the need of reform and unselfish enough to effect it.

SOME RESEARCH PROBLEMS IN FARM FINANCE IN THE SOUTHWEST

By B. M. GILE
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The trend in agriculture, especially since 1921, has been toward a more intensive application of capital and a less intensive application of physical labor. As compared with earlier times land also represents the investment of increased purchasing power. These changes demand more attention to business management from the farmer than formerly. As a result there is a growing need for farm finance studies in our state experiment stations.

The research problems of farm credit in the southwest may be classified under three broad divisions or phases. There are the problems connected with the proper relationships in the use of land, labor, and capital on each individual farm. Another group of problems has to do with the reduction of uncertainty and the measurement of the risks connected with the farm investment. A third group of problems centers around the markets in which farmers may supplement their owned capital with borrowed capital.

In connection with the problem of maladjustment of the factors of production, the factors should be combined so as to obtain the highest net return to the operator. This ideal is complicated in farming by the large number of small farms with their varying types of managerial ability, soil, topography, and distance from market. Farm management studies throw some light on the problem of adjustments. In the application of results to particular farms, however, there still seems to be need for a considerable dose of the thing the statisticians are now calling "experienced judgment." After the proper combination has been decided upon, there remains the problem of the way and time when it shall be done. For example, if additional land is needed should the land be bought or rented? Buying land may preclude proper control over operating capital. Thousands of farmers would be better off today, if they had rented land in 1919 instead of buying. Both the farm buyer and the person who extends credit on farm land security needs to know more about the probable

level of land values as they are likely to be 10 or 20 years hence. Land values in the southwest have not declined as much as in Missouri and Iowa. Is this a permanent situation?

The second group of problems has to do with the reduction of uncertainty and the measurement of the risks connected with farming. Few businesses are subject to greater uncertainty of definite outcome than is agriculture as conducted at present. Usually when the farmer plants a crop he does not know the selling price of the product per unit, when, and if produced. It may fluctuate as much as 50 per cent or more from the price at time of planting. Consequently he is speculating as to whether he will obtain returns sufficient to cover his input. As contrasted with this the manufacturer often has sold the cloth or yarn before he buys the raw cotton. Future markets remove very largely the element of risk due to price fluctuations in the handling of cotton and the grains from the time the raw product leaves the farm until it is ready for final consumption. Future markets were not developed by the farmer or especially for him but they might be made to serve him in a more direct manner. The problem here is to organize a suitable contact or connecting link between the individual farmer and the future markets. The coöperative association would seem to be the most logical institution for this. Price forecasting seems to be rapidly approaching the stage of development where it would serve as a basis of judgment on when to sell.

Crop insurance is another matter which needs to be attacked from the standpoint of the crop area. The uncertainty as to the burning of a single building does not permit the individual safely to carry his own risk. The same is true of individual or community risks of crop failure. However, if the probability is taken to cover thousands of houses and thousands of farms then the risk may be measureable and individual insurance possible. It should be possible to measure for the staple crops at least the risk from weather, pests, and disease and thus make insurance on such crops available at a cost low enough that farmers generally would carry it.

The third group of problems centers around the market to which the farmer must go in order to obtain control over the factors of production which he does not own. Closely related to this is the localized problem of those farmers who

must depend upon some one for consumption credit. Since such farmers do not have tangible assets, the cost of advances will depend largely upon local customs. There seems to be but two ways of escape for them from the present high costs of their credit. Either they may work for wages which are paid at frequent intervals or they may learn to save something in years when they have good returns. In most cases owned purchasing power to the extent of $300 would enable this class to save from $40 to $80 in interest and service charges commonly paid each season in order to get someone to feed and clothe them during the crop-growing season.

The market for long-term farm credit has been broadened and well organized. The farmer who has the required minimum equity can obtain the borrowed part of his capital investment in land and buildings through the Federal farm loan system at reasonable rates of interest and on amortization terms well suited to the farm business. Since this is the cheapest form of loan that is available to farmers, there are some farmers who would do well to finance their demands for intermediate credit through this means. Studies made in Arkansas show that many farmers are paying 8 and 10 per cent on farm loans although they have ample equity to entitle them to Federal land bank loans.[1] As soon as we have learned to appraise the value of farm lands with more assurance, something should be done in the way of providing credit for the tenant who may wish to become a farm owner but who may have only one-quarter of the capital necessary to enable him to take advantage of the Federal system. The tenant is already a farmer so that to change his status with respect to the land would not involve the surplus problem.

The local bank is the most important source of seasonal credit for the farmer. In a typical plantation district in Arkansas, a credit survey by the department of rural economics and sociology found that the plantation owners obtained 81 per cent of their seasonal credit from banks. Two other Arkansas surveys among the small upland farms found that the owner-operators obtained 38 and 72 per cent respectively of their seasonal credit from local banks. In one of the two districts even the cash and share tenants received 71 per cent of their seasonal credit directly from the local

[1]See Arkansas Experiment Station Bulletin No. 228.

banks but in most districts in Arkansas the percentage of tenants who obtain credit directly from the banks will not average more than 25 per cent. However, the merchants and landlords who assume responsibility for seasonal credit to croppers and others are only able to do so through the use of bank credit.

Probably the greatest weakness in the farm credit market lies in the country banking system. It has not stood the test in times of stress. The percentage of state and national banks failing from 1920 to 1927 for six southwest states and Iowa and Minnesota is shown in Table I. The data show from 3

TABLE I. PERCENTAGE OF STATE AND NATIONAL BANKS FAILING IN SIX SOUTHWEST STATES COMPARED WITH IOWA AND MINNESOTA*

State	Number national banks 1921	Number national banks failing 1920-27	Percentage national banks failing†	Number state banks 1921‡	Number state banks failing 1920-27	Percentage state banks failing†
Arkansas	83	8	9.6	405	68	16.8
Georgia	95	9	9.5	628	245	39.0
Louisiana	37	1	2.7	233	31	13.3
Mississippi	30	2	6.7	324	29	9.0
Oklahoma	357	48	13.4	622	162	26.0
Texas	553	34	6.1	1,052	158	15.0
Iowa	354	56	15.8	1,449	304	21.0
Minnesota	341	51	15.0	1,195	247	20.6

*Data obtained from Annual Reports of the Comptroller of the Currency.

†Bases number national banks October 1, 1921, state banks June 30, 1921.

‡State (commercial), savings, private banks and loan and trust companies.

to 16 per cent of the national banks and from 9 to 39 per cent of the state banks closing their doors during the eight-year period from 1920–27. Such a record displays weakness at a time when strength is especially needed. Many farmers have found their source of credit shut off in the community of a failed bank. The fact that 80 or more per cent of the banks did not fail shows that it is not necessary for banks to fail

in times of stress. Analysis by states of the causes of these failures is needed. We are told that small banks are the ones that fail, yet studies in Minnesota and Iowa do not bear out this statement.[2]. It has been said that membership in the Federal Reserve System would result in fewer bank failures but the percentage of national banks failing between 1920 and 1927 in Iowa, Minnesota, and Oklahoma shows the need for more analysis of the why in connection with this point. Analysis might show that there are several factors involved in the reduction of bank failures.

Farmers complain that local bank rates of interest are high, 8 and 10 per cent in many communities on good security and about the same rate on any security that will be accepted at all. The dividends paid by country banks in recent years have not been excessive. A margin of loan rates over those paid on savings of 100 per cent seems under present conditions to be necessary. One trouble seems to be that we have too many banks for the farmers to support. In the states of Arkansas, Georgia, Mississippi, Oklahoma, and Texas, there were 792 banks in 1900, 3,438 in 1910, and 4,205 in 1920. This growth in number of banks increased until 1921 when there were 4,419 banks or 28 per cent more than in 1910 and 126 per cent more than in 1905. Many little towns have two and three banks where one bank could do all the business now being done with only slight increase in the overhead at present required for each bank.

Since 1921 the number of banks has declined due to failure, consolidation, and improved regulation with respect to the establishment of new banks. In 1927 there were 887 less banks than in 1921. It is a question whether agriculture can or should continue to support the number of banks found in some communities. Since the maximum rates paid depositors on savings are in some instances fixed by law and rates charged on local loans do not appear to be competitive, the reduction of the number of banks to the number needed may be a slow process.

The intermediate credit problem is still in an unsatisfactory condition. A sound basis for its solution would seem to have been laid in the Intermediate Credit Banking System provided

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[2]See *Journal of Business of the University of Chicago*, January, 1929, p. 65, and Minnesota Experiment Station Technical Bulletin No. 28.

by Congress in 1923. The system has been of valuable assistance to farmers in some districts through direct loans to cooperative marketing organizations, and through rediscounts to livestock loan companies and agricultural credit corporations. The amount of loans and discounts made by the twelve banks by years is shown in Table II and the amount rediscounted for farmers in 1928 through various organizations is shown in Table III. While the direct loans to coöperatives have been less than were anticipated by some, the coöperatives

TABLE II. INTERMEDIATE CREDIT BANK LOANS AND DISCOUNTS, 1923–1928*
(000 omitted)

Year	Direct loans	Discounts	Total	Total loans outstanding December 31
1923	$ 34,700	$ 9,400	$ 44,100	$42,700
1924	57,100	33,400	90,500	62,300
1925	124,200	53,500	177,700	80,100
1926	102,900	73,500	176,400	92,400
1927	51,000	87,100	148,100	75,900
1928	53,000	83,600	136,600	81,300

*Data for first four years from annual reports and for the last two years from December, 1928, monthly report of Federal Farm Loan Board.

value highly both the direct and indirect help of the intermediate credit loans. The trouble is that only a small percentage of farmers belong to the coöperatives obtaining credit cheaper and on better terms through this means. Livestock loan companies reach only a very limited group of farmers. The great mass of farmers still have not made use of services provided by the intermediate credit system. The local banks with but few exceptions have not been willing to act as a connecting link between the farmer and the system. Agricultural credit corporations have not been generally established. The basis for their general establishment on a sound basis appears to be unsolved. Some good authorities say that to set up a large number of these organizations would be detrimental to the country banks. The situation now is that the great bulk of farmers are not being served by the intermediate

credit banks. There is needed a plan for connecting the system with the farmer. An aggressive administration of the system would help in solving this problem.

TABLE III. CONTACT ORGANIZATIONS BETWEEN THE INTERMEDIATE CREDIT BANKS AND FARMERS FOR DISCOUNTS IN 1928*

Name of bank	Agricultural credit corporations	National banks	State banks	Livestock loan companies	Savings banks and trust companies	Total outstanding
Springfield	$ 648,713	$ 3,750			$ 7,000	$ 659,463
Baltimore	1,239,777	46,124	150,682		6,000	1,442,585
Columbia	2,273,794					2,273,794
Louisville	120,069			85,926		205,995
New Orleans	2,001,329			140,675		2,142,005
St. Louis	380,782			542,282		923,065
St. Paul	6,961,997		34,756	32,955		7,029,710
Omaha				5,803,873		5,803,873
Wichita	92,654		2,483	492,100		587,237
Houston	482,503			8,532,036	77,500	9,092,040
Berkeley	3,553,179			5,826,476		9,379,656
Spokane	3,236,188			2,327,507		5,563,695
Total	$20,990,992	$49,874	$187,923	$23,783,833	$90,500	$45,103,123

*Federal Farm Loan Board Report for December, 1928.

For the solution of these and other problems in connection with farm credit, facts as to credit practices on farms and the production conditions and trends affecting the future values of physical things underlying credit extension are needed by districts in the various states. Even to throw all farmers in one district into a single class often leads to faulty conclusions. Probably no other phase of research work has been so much neglected by a large number of our state experiment stations as has the problem of credit. Much of the literature available on farm credit deals with secondary data, is historical in nature and often presents conclusions without supporting data that are convincing.

THE RATIFICATION OF THE THOMSON-URRUTIA TREATY

By WATT STEWART
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On the 20th day of April, 1921, the Senate of the United States ratified the Thomson-Urrutia Treaty, or, to describe it by its official title, the "Treaty between the United States of America and the Republic of Colombia for the settlement of their differences arising out of the events which took place on the Isthmus of Panama in November, 1903."[1] The ratification of this treaty was the final act of a long series of efforts to satisfy the grievances which Colombia had for eighteen years entertained against the United States and which for the whole of that period had embarrassed the relations of the two countries.

It is not within the province of this study to discuss the action of the United States in relation to the revolution in Panama in November, 1903, and the establishment of an independent government there. Suffice it to say that Colombia felt deeply injured and was quick to voice her grievances and to propose a resort to arbitration as the means of securing redress for them. The government of the United States attempted to justify its actions and declined arbitration. In 1906–1907 an effort at settlement by negotiation resulted in the drawing of the Root-Cortes-Arosemena tripartite treaties. By March, 1909, the United States and Panama had ratified the treaties to which they were parties,[2] but popular opposition in Colombia caused the failure of ratification by that government.[3]

In the latter part of President Taft's administration a further attempt was made through the agency of the United States minister to Colombia, James T. DuBois, to negotiate a settlement of differences. Colombia was unwilling to grant material concessions and hoped, besides, that more favorable

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[1] *Treaties and Acts of Congress Relating to the Panama Canal, Supplement No. 1* (Balboa Heights, 1922), p. 261.

[2] *House Document No. 1444*, 63 Cong., 3 sess., p. 5.

[3] Ospina to Knox, November 25, 1911. *Foreign Relations of the United States*, 1913, p. 284.

terms might be obtained from the incoming Democratic administration. Hence, no settlement.

With the inauguration of a Democratic administration at Washington a situation was created which seemed to give good promise of a settlement with Colombia. The non-existence of diplomatic relations between Panama and Colombia was an embarrassment to the ward of the United States which the last-mentioned country was anxious to relieve. The continued ill will of Colombia toward the United States was felt to be an influence which was injuring the latter's prestige in the Caribbean; it would be worth something to remove that ill will and its adverse influence. The Democratic administration would not be particularly hampered in its adjustment with Colombia by a fear that Mr. Roosevelt's reputation might suffer. Lastly, public sentiment in Colombia was beginning earnestly to desire a settlement, and the government was put in a state of mind favorable to successful negotiation by the feeling that the government at Washington would not be unfavorable to some concessions. Mr. Bryan's well-known pacifism and belief in friendly arbitration doubtless added to Colombia's hopes of an advantageous agreement.

Soon after coming into the headship of the Department of State Mr. Bryan suggested that Colombia make a proposition.[4] Mr. DuBois had been replaced at Bogotá by Thaddeus A. Thomson and to him the Colombian Government expressed its willingness to negotiate at Bogotá.[5] Accordingly proposals and counter-proposals were made and after somewhat extended negotiations and important concessions by both parties common ground was reached and a treaty was signed on April 6, 1914.[6] The provisions of the treaty may be summarized as follows:

Art. I. The United States expresses "sincere regret that anything should have occurred to interrupt or mar the relations of cordial friendship that had so long subsisted between the two governments."

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[4]Graham H. Stuart, *Latin America and the United States* (New York, 1922), p. 89.

[5]Memoria del Ministro de Relaciones Exteriores al Congreso de 1914. *Foreign Relations of United States*, 1914, p. 143.

[6]Thomson to Bryan, March 24, 1914. *Loc. cit.*, p. 156.

Art. II. (a) Colombian troops, munitions, and ships of war have free passage through the Panama Canal, even in case of war between Colombia and another country. (b) Products of the soil and industry and the mails of Colombia pass through the canal on the same terms as the products and mails of the United States; products of the soil and industry of Colombia, such as cattle, salt, and provisions, are admitted to entry into the Canal Zone and the islands, etc., occupied by the United States as auxiliary thereto on an equality with similar products of the United States. (c) Colombian citizens crossing the Canal Zone are exempted from tolls, etc., to which citizens of the United States are not subject. (d) In case of the obstruction of the canal the products, materials, and citizens of Colombia pass on the Panama Railway on an equality with corresponding products, materials, or citizens of the United States. (e) Coal, petroleum, and sea salt are to be transported on the railway free of cost, except actual cost of handling and transportation, which shall not exceed one-half the ordinary freight charges levied upon similar products of the United States.

Art. III. The United States is to pay Colombia six months after exchange of ratifications $25,000,000 gold, United States money.

Art. IV. Colombia recognizes the independence of Panama; boundary specified. In consideration of this recognition the United States will take the necessary steps to obtain from Panama the despatch of an agent to negotiate and conclude with Colombia a treaty of peace and friendship.

Art. V. Exchange of ratifications.[7]

The history of the Thomson-Urrutia treaty in Colombia is very different from that of the treaties of 1907. Shortly after the signing of the treaty the government published it throughout the republic. Discussion of it in the press was "absolutely full and free" as it was also in Congress. The discussion was peaceable and serene, a fact which indicated, according to a Colombian official, much progress in parliamentary debates and in the press.[8] So expeditiously did consideration of the treaty go forward that Thomson was able on

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[7] *Foreign Relations of the United States*, 1914, pp. 163, 164.

[8] Memoria del Ministro de Relaciones Exteriores al Congreso de 1914. *Foreign Relations*, 1914, p. 144.

June 8 to report to Secretary Bryan that it had been approved by the Colombian Congress without amendment.[9] There was some suggestion in Colombia that the law approving the treaty was unconstitutional. To test this point a private citizen instituted proceedings before the Supreme Court and the point was disposed of when the court decided it was disqualified to entertain the matter.[10]

As to ratification by the United States the story is not so simple. The treaty seems to have been to President Wilson a part of a general purpose entertained by him for the betterment of the relations of the United States with the Latin-American peoples.[11] As such he desired its ratification. Accordingly, on June 16, 1914, he transmitted the treaty to the Senate, where on the same day it was referred to the Committee on Foreign Relations.[12]

Soon after the completion of the treaty Secretary Bryan issued to the press a statement in support of it. He stated that the object of the treaty was to bring about friendly relations with Colombia by acceding to her claim. "Not only is it our duty," he said, "to do justice to Colombia, but in case of doubt as to what is just, we must resolve that doubt against ourselves and in favor of Colombia." He thought that whether her feeling that she had been aggrieved was justified or not, she had sustained a great financial loss in the separation of Panama from her, a loss which Mr. Bryan estimated at more than $25,000,000. He believed that the ratification of the Colombia treaty would restore friendly relations between the two republics, and "more than that it will [would] give prestige to the United States throughout Spanish America." He urged that the United States could afford to be not only just but generous when by its generosity it could increase the friendliness of the many millions in Central and South America with whom his country's relations were becoming daily more intimate.[13]

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[9] *Foreign Relations*, 1914, p. 162.

[10] *Ibid.*, pp. 165, 166.

[11] L. Ames Brown, "A New Era of Good Feeling," *Atlantic Monthly*, Vol. 115 (1915), 107.

[12] *Foreign Relations*, 1914, p. 162.

[13] *The Nation*, Vol. 107 (1914), 690, 691.

Because of the press of other public business the treaty did not come from committee during the session in which it was presented. But in March, 1917, it was reported by Senator Stone, of the Committee on Foreign Relations.[14] With the majority report went one signed by a minority of the committee, Senators Lodge, McCumber, Borah, Brandegee, and Fall. It read in part:

> We cannot afford to purchase cordial relations with any country. We cannot afford to answer a blackmail demand. Any friendship which is bought is worthless, especially when bought under threats which, when successful, breed contempt in the mind of the seller and a sense of bitter dislike and humiliation in that of the buyer.
>
> This payment can only be predicated on the assumption that we are indebted to Colombia, either morally or legally and no combination of words, no niceties of diplomatic language can hide the naked truth that this treaty is an admission that the conduct of this country in acquiring the right to construct a canal across the Isthmus of Panama was a wrong committed against Colombia. On no other hypothesis could Colombia ask for the indemnity of $25,000,000 and on no other could we acquiesce in that demand.
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> . . . As we believe we have not done the country an injustice, we earnestly protest against the purchase of her friendship.[15]

Shortly after this the war came on and the Colombian question was swept aside in the press of more imperative business. During that period, however, the United States was informed that Colombia would accept certain amendments which Senator Lodge had suggested, most important being the striking out of the "regret" clause.[16] In the spring of 1919 the Committee on Foreign Relations again took up the treaty. On July 29 it was reported favorably.[17] Just at this juncture dispatches from Colombia brought to Washington the information that a decree had been issued reviving certain other decrees of ancient date which threatened seriously to affect the rights and titles of American investors in Colombia, including especially concessions of lands to American oil companies. The treaty was thereupon recommitted. The ques-

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[14]*Congressional Record*, 67 Cong., 1 sess., pp. 158, 159.

[15]*Congressional Record*, 67 Cong., 1 sess., p. 202.

[16]Colombian minister to Philip, of the State Department, quoted by Lodge, *Cong. Record*, 67 Cong., 1 sess., p. 474.

[17]*Congressional Record*, 67 Con., 1 sess., pp. 157, 159.

tion of the decrees, after consideration, was referred to a sub-committee consisting of Senators Fall, Smith of Arizona, and McCumber. Further negotiation with Colombia was entered upon in which Senator Fall, representing the committee, was consulted throughout by the State Department. The question of the decrees was finally settled by a decision of the Colombian Supreme Court which confirmed the constitutionality of the concessions, giving a strong title. The treaty was then again brought before the Committee on Foreign Relations and on June 20, 1920, was again favorably reported to the Senate.[18] Senator McCumber stated in the Senate in April, 1921, that it was well understood by the Colombian government that the United States would make no treaty with her unless the decrees were repudiated, and that he had no doubt the decision of the court was caused by the desire to clear the way for the treaty.[19]

Even then the Senate was slow to act on the treaty, and it was not until after President Harding's inauguration that its consideration was begun. On March 9 the President sent in a special message in which ratification was urged.

The final debates on the treaty were public and occupied most of the period of April 12 to 20, 1921, being opened on the former date by Senator Lodge, Chairman of the Committee on Foreign Relations. Chief among the treaty's opponents were Senators Borah of Idaho, Reed of Missouri, Norris of Nebraska, Lenroot of Wisconsin, Kenyon of Iowa, Watson of Georgia, Kellogg of Minnesota, and Poindexter of Washington. Those bearing the brunt of the battle for ratification were Senators Ransdell of Louisiana, Wolcott of Delaware, McCumber of North Dakota, Knox of Pennsylvania, Shortridge of California, Pomerene of Ohio, and Lodge of Massachusetts. Some consideration will first be given to the arguments of those opposing the treaty.

Ratification of the treaty, notwithstanding the elimination of the express declaration of regret, would be an admission of the guilt of the United States in the whole Panama matter. Said Senator Kellogg, "I am opposed to this treaty because

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[18] *Cong. Record.*, 67 Cong., 1 sess., p. 159.

[19] *Ibid.*, p. 441.

it writes the word 'shame' across the pages of American history."[20] Senator Borah declared that the underlying proposition of the controversy was whether or not the United States had done a wrong to Colombia in 1903. Believing it had not, he thought Colombia had no claim against the United States legal or moral. The name of Roosevelt should not be dishonored.[21] Closely associated with this point was the argument that the United States owed Colombia nothing. All of Mr. Roosevelt's acts in relation to Panama were founded on right and justice, therefore no indemnity was due.

It was argued that the treaty if ratified would, far from improving the relations of the United States with the Latin-American countries, actually make them worse. The treaty accorded to Colombia privileges in the canal which were denied other states. Here was discrimination that would arouse jealousy and ill will, declared Senator Reed.[22]

Another opposition argument, based on the special privileges the treaty would accord Colombia, was to the effect that all such privileges granted Colombia would have to be granted all other nations with which the United States had commercial treaties which included the "favored-nation" clause. Senator Norris declared that the effect of the treaty would be to make the canal "free to everybody at the expense of the taxpayers of the United States, not for today, not for tomorrow, not for this year only, but for all time."[23] He was seconded in this statement by Senator Reed who asserted that if Colombia were granted the right in time of war to pass her war vessels through the canal free of charge, the same must apply to Japan and other nations under the "favored-nation" clause.[24]

Through the week of debate these arguments were advanced over and over and the course of events on the Isthmus of Panama in 1903 was retold many times. What were the arguments of the friends of the treaty?

By some it was frankly admitted that Colombia had a just grievance. Of this number was Senator Wolcott. "I conceive,"

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[20] *Congressional Record*, 67 Cong., 1 sess., p. 191.
[21] *Ibid.*, p. 248.
[22] *Ibid.*, p. 446.
[23] *Congressional Record*, 67 Cong., 1 sess., p. 466.
[24] *Ibid.*, p. 445.

said he, "that Colombia has a just grievance against us. Our conduct toward her was such as to give her a claim for compensation against us founded, if not in technical right, yet unquestionably in good morals. This claim has a two-fold source. It arises under the treaty of 1846, and it also arises because of our precipitate recognition of the new Republic of Panama."[25] Senator Pomerene, though not quite so outspoken, took virtually the same ground.[26]

Senator Lodge made a point of the security of the canal. Colombia held portions of both Atlantic and Pacific coasts. She could be of great assistance to the United States in protecting the canal in case of war. Better relations through ratification of the treaty would secure such assistance.[27]

The point was also made by Senator Lodge that the treaty would fix the international status of Panama which was unsettled as long as Colombia refused to recognize her independence and her boundary.[28]

Much was made of the probable effect of the treaty on the South American relations of the United States. Senator Lodge thought that the settlement of the open question with Colombia would have a good effect among all the South American states, "and especially the larger, more stable and more powerful states upon the eastern and western coasts and in the southern part of the continent."[29] Senator Ransdell also stressed this point.[30]

Senator Ransdell argued further that the treaty would afford a splendid opportunity to sustain the reputation of the United States "for doing fine, big, magnanimous things. . . . A display of a spirit of good will toward Colombia will give the world a further proof of our sense of fair-mindedness."[31]

A somewhat fine-spun argument was presented by Senator Knox. After contending that the treaty before the Senate squared with previous actions of the United States with respect to the Panama matter he asserted that the question was

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[25] *Ibid.*, p. 449.
[26] *Ibid.*, p. 229.
[27] *Congressional Record*, 67 Cong., 1 sess., p. 160.
[28] *Ibid.*
[29] *Ibid.*
[30] *Ibid.*, p. 436.
[31] *Ibid.*

not, as some put it, how much the United States was getting under the treaty, but rather how much she had already gained. Although he did not believe the United States responsible for Colombia's loss in the revolution of Panama, yet the United States had benefited by that loss and was indebted to Colombia to the extent that she had gained.[32]

An important place in the discussion is occupied by considerations of the material gains which ratification would bring the United States through increase in trade and commerce. So important a place does it have, in fact, that the student of the treaty can scarcely escape the conclusion that but for the removal of friction through the medium of oil the ratification machinery would scarcely have ground out an approved treaty. The connection of oil with ratification deserves especial attention.

Mention has been made of the Colombian decree of 1919 which threatened American oil interests in that country and of the appointment of a sub-committee, one member of which was Senator Fall, to investigate the matter. It will be remembered also that Senator Fall was one of the minority of the Committee on Foreign Relations which so strongly denounced the treaty when reported to the Senate in 1917. In January, 1918, we find him declaring:

> I think there never has been such an attempt made in negotiating any treaty in this country to violate every obligation to all the countries of the earth with which we have treaties as is shown by this treaty which is now before us. Certainly there has never been any treaty proposed to the Senate of the United States for its ratification which violate every principle of international comity as does this treaty.[33]

Senator Fall could be referring here only to the features of the proposed treaty which granted to Colombia special privileges in the use of the canal. Those privileges were not amended out of the document, but in 1921 we have the peculiar phenomenon of Senator Fall (in 1921 Secretary of the Interior) leading the campaign for ratification of the treaty containing those features which he had so strongly denounced. When one links the subsequent history of Mr. Fall with his

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[32] *Congressional Record*, 67 Cong., 1 sess., p. 475.

[33] *Ibid.*, p. 195.

championship of this measure there is an unmistakable impression of something "rotten in Denmark." It was Senator Lodge's influence, perhaps, which more than that of any other one man helped to swing the Republican Senators to support of the treaty. One of his strongest arguments for ratification was that such action would put the United States in a position to compete with Great Britain in oil rivalry. In his speech of April 12 the Senator exhibited a map and graphic table[34] designed to reveal the immensity of Great Britain's oil interests, in Colombia and elsewhere. Said he, "I have heard it said that the oil interests are supporting this treaty. . . . I know, and everyone else who has studied the subject knows, that the question of oil is vital to every great maritime nation. . . . This is one of the important features of our good relations with Colombia and with all South America, but particularly with those countries in the north where the oil fields are believed to lie."[35] On April 15 Senator Reed, speaking of Senator Lodge's conversion to support of the treaty remarked that " after having repeated that he would never consent, as he did a few years ago, he consented, and he did it because of an oil proposition that Secretary Fall had pipe-lined into this treaty."[36]

"Recently," said Senator Reed, speaking on April 19, "attorney for these oil companies [Standard and others], and parties in interest, came to Washington and stated that if the treaty was not ratified it would involve the entire oil situation; that the present administration of Colombia might be overthrown and the oil interests of these people lost. The substance of the talk was that the treaty must be ratified in order to protect the oil interests."[37]

Senator McCumber declared that he was influenced in supporting the treaty by "the immense opportunities that would be opened up to American capital in the development of the vast oil fields of Colombia should such a treaty be consummated. . . . I am voting to stake $25,000,000 on the effort of the President to secure without an additional donation a

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[34] *Cong. Record.*, 67 Cong., 1 sess., pp. 164, 165.

[35] *Ibid.*, pp. 161, 162.

[36] *Cong. Record*, 67 Cong., 1 sess., p. 314.

[37] *Ibid.*, p. 447.

supplemental agreement that will be worth to this country many times that sum."[38]

The supplemental agreement referred to had been mentioned by Secretary Fall. In a letter to Senator Lodge written March 21, 1921, he said:

> I have been in close contact with representatives of Colombia in this country and through certain personal representatives of my own in connection with my duties as chairman of the Senate sub-committee, in close contact with officials of the Colombian Government and prominent citizens in Bogotá and other portions of Colombia. I have every assurance, satisfactory to myself, short of an actual written agreement that the present Colombian Government, and prominent Colombians, favoring this policy, will immediately, upon ratification of the present treaty, of their own motion or upon a mere suggestion from us, enter into a supplemental treaty. . . ."[39]

It was on this basis that Senator McCumber was willing to wager a bagatelle of the people's money. So much for the case of oil.

April 20 had been set as the date for the termination of debate. As the vote was about to be taken efforts were made by Senators Borah, Ransdell, Poindexter, and others to put through amendments to the treaty but none of them was successful. The vote when taken counted 69 yeas and 19 nays.[40] An analysis shows that of the former 40 were cast by Republicans and 19 by Democrats, and of the latter 15 by Republicans and 4 by Democrats. Eight Senators were paired and did not vote. A somewhat larger percentage of the Democrats in Congress supported the treaty than of the Republicans.

As ratified the treaty was amended somewhat. The original Article I, containing the expression of regret, was stricken out. Colombia's rights in the canal and railroad were left intact, but an amendment was incorporated in the article proclaiming that the title to the Panama Railway and to the canal were vested "entirely in the United States of America without any encumbrances or indemnities whatsoever." Instead of being paid in a lump sum as in the original provision the indemnity was to be paid in five installments of $5,000,000

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[38] *Ibid.*, p. 442.
[39] *Congressional Record*, 67 Cong., 1 sess., p. 163.
[40] *Ibid.*, p. 487.

each, the first within six months after the exchange of ratifications, the others at intervals of a year. Other provisions were substantially unchanged. Ratifications were exchanged on March 30, 1922, at Bogota as provided in the treaty and the treaty became effective as of that date.

Newspaper comment in the United States during the Senate discussion of April and immediately following ratification reveals a state of public sentiment much like that of 1914 when the treaty was negotiated. The *Outlook* declared no treaty should be passed unless it contained a disclaimer of intention to pay reparation for a wrong done, and added, "If we need the oil of Colombia let us make a treaty in which we shall openly say so and pay a generous price for it."[41] The New York *Tribune* maintained that the record of the United States in the Panama-Colombian affair was a record of honor, and that to acknowledge the superiority of Colombia's title to the Isthmus was "to do cruel wrong to the people of Panama."[42] The New York *Herald* was not prepared to believe that the implied confession and attempted purchase of friendship would have the effect upon Latin-American sentiment which the promoters of the experiment professed to expect.[43]

On the other side the Springfield *Republican* believed that "the official act of reparation is not to be disparaged and American history will read the better for it."[44] The Boston *Post:* "That Uncle Sam owes Colombia the money for what we seized is indisputable, and we cannot expect the good will of the southern republics until we pay the debt."[45] The New York *World:* "Whether President Harding, in urging ratification of the treaty, was concerned about oil or was concerned about justice, he has helped to right a great wrong."[46]

Notwithstanding the assertion of Senator Lodge or anyone else that the removal from the treaty of the formal expression of regret eliminated the admission of guilt, the fact remains that the ratification of the treaty amounted to an admission that the United States was not justified in all of her

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[41] Vol. 127 (1921), 669.
[42] *Literary Digest*, Vol. 68 (1921), March 26, p. 12.
[43] *Cong. Record*, 67 Cong., 1 sess., p. 429.
[44] *Literary Digest*, Vol. 69 (1921), May 7, p. 11.
[45] *Literary Digest*, Vol. 68 (1921), March 26, p. 12.
[46] *Ibid.*, Vol. 69 (1921), May 7, p. 11.

actions with respect to the Panama revolution in 1903. No concession by Colombia contained in the treaty can be considered as worth to the United States $25,000,000. Colombia negotiated the treaty in 1914 in the belief that the United States was making moral reparation, and though she acceded to the removal of the "regret" clause, there seems no reason for believing she did not think the implication of the payment of the $25,000,000 constituted such reparation. Senators and publicists in the United States might say that the money payment was for the purchase of Colombia's friendship, but that country would assuredly resent as an insult any open proposition to buy her good will.

A number of Senators supported the treaty on the ground that Colombia had a just grievance, but the most powerful consideration producing ratification, if we may use as a gauge the degree of attention and stress given it in senatorial debate and in the press, was a materialistic one—betterment of trade and commerce—and the United States by its insistence on that point no doubt gave to the Latin-Americans fresh cause to brand it anew as "the land of the almighty dollar." Practically all of the Latin-Americans believe Colombia was wronged in 1903, and other nations regard the proceedings of the United States as being at least sharp practice. In the writer's opinion the position and prestige of the United States internationally, and particularly in Latin-America, would have been bettered had it made a frank admission of unjust treatment of Colombia and ratified the treaty on that basis.

CLASSICAL THEORY OF INTERNATIONAL TRADE: A POSTSCRIPT

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In an earlier number of this journal (Vol. VIII, No. 4, March, 1928), the writer attempted briefly to set forth the historical significance of the Classical Theory of International Trade and the difficulty of accepting its assumptions of the immobility of labor and capital as a distinctive feature of the mass of foreign trade either in 1800 or at the present day.

It remains to ask why a doctrine so irrelevant to the main part of foreign trade held such firm dominion over economic thought from Ricardo to Marshall inclusive. The answer is hardly in doubt. To Adam Smith it seemed that "to expect that the freedom of trade should ever be entirely restored in Great Britain is as absurd as to expect that an Oceana or Utopia should ever be established in it." (I: 435). To us in retrospect it is an episode. But to the nineteenth century it was final truth. Military victories and the Industrial Revolution gave to England after 1815 a unique superiority in international trade. With a virtual monopoly of machinery and steam power (and she did her best to make it absolute by continuing to 1843 the legal prohibition on the export of machinery) she exported manufactures and imported raw produce. And it was agreeable to tie the world to this arrangement by giving to it the sanctity of economic law. One element in the balance, however, was disquieting. After 1815 England began to depend on the foreigner, not only for the raw materials of industrial production, wool, timber, and cotton (an old friend), but also for the first necessity of life, the foodstuff, wheat. Now timber came from Canada, sugar from the West Indies and Mauritius, tea from India, but wheat, by contrast, from foreign countries, from Poland and Russia and later from the U. S. A. Regarding this dependence as a national peril, the agriculturists clamored for protection. Therefore to the doctrine of comparative costs, as propounded by Ricardo, there had to be added a second doctrine, which Ricardo promptly took over from its author, Edward West, the Law of Diminishing Returns in Agriculture. Dependence on

the foreigner was thus made a good friend for England, because it relieved her from the hardship of digging deeper into diminishing returns on her old island soil. It is safe to say that a new continent would not have evolved from its experience either of these laws. With an undeveloped inland it would have evolved a doctrine of the superiority of the home market; and observing in its agriculture the exploitation of natural resources it would have stated a law of soil deterioration over a period of time, in the absence of conservation.

Free trade, however, had still another law wherewith to enrich the world, as its own sun was setting, the Law, or rather Doctrine, of Consumer's Surplus, as unfolded by Jevons and Marshall. This derives directly from the fiscal policy of Peel and Gladstone, who sought plenty for the consumer. It was indeed no part of their design to fill the stomachs of the undeserving; and they offered plenty in the first instance through easement of the duties on raw materials which set the poor consumer to work. This was Gladstone's explicit interpretation of Peel. They did not feel called upon to contemplate the danger of unemployment through free trade in manufactured goods, because with free trade all round (and they expected the world to follow England) comparative costs would, they firmly believed, work on England's side. Did not Manchester in 1853 petition to be exposed to the competition of French silks?

But the classical theory of international trade died hard, even when political economy was fully alive to the limitations of Ricardo and Mill, and England's monopoly of foreign trade was no more; and the reason is that there was more to it than a cross-section value analysis of commodities in a theoretical international trade. There was the monetary complement, which Ricardo so brilliantly tracked down and which was not dependent on the assumptions of immobility. And monetary understanding became more urgently necessary as England, in the person of London, became the nerve center of international finance. For she was thereby exposing herself to the pressure of the world, and for protection she attracted to herself, when she wanted it, the world's gold flow by the raising of her magical Bank Rate. A device so potent and so oblique as this was impossible to any but an international sovereign; and the sovereign of gold coin was

at this time sovereign in fact. But must not a country so trading and so financing be bled to death through permanent underselling by foreign competitors? Why this does not happen is clear to those who understand the function of gold in the balance of international trade, as Ricardo displayed it for all time. And Marshall added to Ricardo by showing how gold is just the Ricardian strong case of other things which approximate to gold. When the sterling exchange becomes sufficiently unfavorable, merchants will export gold in the course of a series of adjustments. They will also export coal, lead, and Egyptian bonds; and we might speak of coal point, lead point, Egyptian bond point, when export of these occurs. But we do not. We speak only of gold point, because of the basic position which gold holds in the credit structure of the nation.

So long as it is within the atmosphere of the money market, British analysis is adequate alike in the hands of Marshall and of his numerous disciples. But those liberal reformers who are prepared to cure unemployment in England by diversion of resources from foreign to domestic enterprise must face the difficulty so successfully stated by Professor T. H. William of Harvard in the *Quarterly Journal of Economics* of June, 1929 ("Theory of International Trade Reconsidered"). For England by her imperial growth and international maturity has specialized in foreign trade. If she slackens in this, she turns back upon her past, into some likelihood that the taxpayer will be left to foot the bill. An expedient, technically correct at a given point of time, will break down when it violates an organic trend. If Scotland builds for the augmentation of domestic employment let it be a ship canal which joins Forth and Clyde and reinstates her on the road between Northern Europe and the outer world. So urges the historian-economist who holds the Adam Smith chair of Political Economy in Adam Smith's University of Glasgow.[1] To speak still more personally, Mr. Keynes reincarnates Ricardo; and I would catch one fraction of that vast spirit of 1776 which after a little while was no more.

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[1]W. R. Scott and Associate: *The Industries of the Clyde Valley during the War*, pp. 190–192.

BOOK REVIEWS

EDITED BY O. DOUGLAS WEEKS

The University of Texas

Beveridge, Albert J., *Abraham Lincoln, 1809–1858.* Two volumes. (Boston and New York: Houghton Mifflin Company, 1928, pp. xxviii, 607; ix, 741.)

In the preface to these posthumous volumes, Mr. Worthington C. Ford says:

"When Mr. Beveridge had finished his *Life of John Marshall,* he already had in view writing a Life of Abraham Lincoln, to be, as he expressed it, a companion piece to the Marshall, continuing the institutional interpretation of America and weaving it about the life and career of Lincoln as he had tried to weave the first part of such an interpretation around the life and career of Marshall. In the two works he would have covered the subject from colonial days to the end of the War of Secession."

Mr. Beveridge was peculiarly well fitted for such an undertaking. In addition to high intellectual endowment, a natural aptitude for scholarship, and ample private means which gave a wide opening for his strenuous energies, he had a background of training in the law and of wide experience in practical politics which enabled him to understand the sinuosities of Lincoln's political life as no merely academic historian could understand them. While he fully sympathized with the high standards of accuracy and objectiveness set up for the craft by the modern masters of the historical guild, he was accustomed to say that the academic historians write too much with the purpose of satisfying each other. *He* would write for the layman. He, therefore, always strove for a style that was simple, clear, vigorous, readable—and he succeeded in attaining it. He was willing to toil at it; and it is said that he rewrote one of the chapters in this work no less than fifteen times.

In his account of Lincoln's ancestry, childhood, and youth, Mr. Beveridge has adduced no facts not already unearthed by the mob of diggers in that *debris* of uncertainties. Indeed, the most meticulous of those excavators has already pointed out a number of minor errors in this part of Beveridge's story. (William E. Barton, "A Noble Fragment: Beveridge's Life of Lincoln" in *Mississippi Valley Historical Review,* XV, 497–510.) It is when he reaches Lincoln's political career that the author begins his distinct contribution. The story of his six years in the Illinois Legislature, 1834–1840, reveals Abraham Lincoln as a skillful young politician, rising to the leadership of the Whigs, supporting vested interests in state banking, dodging the slavery question, trading votes, willing to foist a ruinous internal improvement system upon the state in return for the location of the state capital at Springfield which he had already decided was to be his future home. He took up the practice of law for a livelihood; but his real interest was in

politics and in his own political advancement. Unlike other lawyers, he attended all the courts in his district; and one is led to believe that he did this not so much for the increase of his practice as for widening his acquaintance and his political influence. In fact, he seems to have attended but poorly to the business of his law office, and one of his partnerships was dissolved on that account. Beveridge has had the hardihood to destroy the cherished legends about Ann Rutledge and about the young Lincoln's intense hatred of slavery. Ann, it seems, was in love with and engaged to a handsomer man. The story of Lincoln's early declarations against slavery rest upon slender and uncertain evidence, while the proof of his cautious avoidance of the subject is overwhelming. Furthermore, there are several incidents of his early career which are not to his credit. His letter about Mary Owens was that of a cad; his craving for office led him close to the line of double-dealing more than once; and his habit of writing and publishing insulting anonymous letters finally brought him humiliation and to the verge of a duel with James Shields—"a lesson which Lincoln never forgot." His hesitancy about marrying was certainly not unique, and it seems—as regards Mary Todd—to have had justification. But while his domestic life may have been as troubled as that of Socrates, it probably had no small influence upon his career; for Mrs. Lincoln was fiercely ambitious for his political advancement, while his efforts to escape her frequent tantrums may have kept him out among his political cronies—and the voters.

His election to Congress in 1846, after two disappointments, was due to careful preparation and management; but his services in Congress were undistinguished except for the political blunder of his "spot" resolutions, which were condemned in his own district so hotly that he could not be re-elected. He worked for the nomination of General Taylor in 1848, turning against his old leader, Clay, on the ground of availability; and he enjoyed a brief, if somewhat inconspicuous, experience in the methods of political management on a national scale in the ensuing campaign. But the Whig victory did not compensate him for his own enforced retirement to private life. His inordinate ambition could not let him be satisfied with the practice of law, and, although his practice was growing, the five years after his return from Congress were the gloomiest of his life. Up to this time he had shown nothing of the statesman; he had been merely a moderately successful politician whose career had seemingly come to an end. And there was Stephen A. Douglas, whose political life had begun with his own, now rising rapidly to leadership in the Democratic Party. Possibly the painful contrast in their political fortunes was a factor in Lincoln's incessant political hostility to Douglas thereafter, although the fact that Douglas blocked his way was cause enough.

But the five years of retirement and reflection were fruitful. When the storm broke over Douglas' Kansas-Nebraska bill in 1854, it was a new Lincoln who seizes the opportunity to reappear in the politics of Illinois. His style of speech and writing has become sharpened, pungent, clear, restrained; gone is the crude, flamboyant frontier style

of earlier years, the imputing of base motives to opponents. There is a promise now of the great state papers which were to lay the foundation of his enduring fame. The Springfield speech, October 4, 1854, repeated at Peoria, marks the transition. There was "a breadth, sympathy, and tolerance in Lincoln's speech not to be found in any other pronouncements of the times. His fairness and honesty are well-nigh startling." Although further disappointments were in store for him, Lincoln was now at the real beginning of his career. The first of these disappointments was his defeat for the Senate in 1855, when the prize went to Lyman Trumbull by a combination of factions. Lincoln now faced a dilemma. He was still a Whig; but the Whig Party was disintegrating and held no future for him. He had held aloof from the new Republican Party formed by a heterogeneous combination of unrelated prejudices—or rather, a group with but one common prejudice, opposition to the Kansas bill—because he feared to align himself with an element which contained so many radical extremists. Beveridge has here given us a most excellent analysis of the conflicting political forces at work in Illinois in 1854–1855 and has shown the reasons for Lincoln's caution. In 1856 Lincoln made his decisions; he joined the Republicans and thereby lost a large following of the old-line Whigs who distrusted the extreme sectionalism of the new party. Lincoln had gauged the drift of political currents correctly; but there was still abundant need for caution. He avoided every subject upon which the groups in the new party divided and concentrated upon opposition to the extension of slavery. On this subject he endeavored to hold together both the abolitionists and those who merely opposed the expansion of the institution. It would be interesting to know whether Lincoln privately believed that slavery was likely to go into the new territories; but we shall never know, for he was "one of the most secretive of men." In the theory that there was danger lay the only hope for his political future, which could be achieved only through the destruction of Douglas. He now had his eye on the legislative campaign of 1858 when Douglas must stand for re-election. He had joined the Republicans in time to take part in the campaign of 1856, in which he opposed the nomination of Fremont; and unexpectedly to him he had received more than a hundred votes for the vice-presidential nomination in the national convention. His friends thought that from this time he had his eye on the presidential nomination in 1860.

From this time forward the story moves toward the memorable contest of 1858, with much attention to the Kansas troubles, to the desperate efforts of the anti-slavery men to keep them alive for political advantage, to the well-meant blundering of the Democratic administration, and to the political significance of the Dred Scott case. As so often happens in the capricious history of politics, Lincoln owed his opportunities largely to fortuitous occasions. But while he was still cautious, he seized the opportunities with boldness. He was moderate in his utterances on Kansas, never descending to the frenzied declamation of other anti-slavery leaders, but turning every development there to political advantage. And never, for publication, does he denounce

the southerners. It is interesting to note that he once challenged the Democrats to abide by the decision of the Supreme Court as to the power of Congress to restrict slavery in the territories, when he thought the court would uphold that power. Later he denounced the opinion of the court in the Dred Scott case, and still later, joined in the charge of "conspiracy"; but he did not make that charge in 1857. An unexpected windfall in the shape of a large fee from the Illinois Central Railroad, which he angled hard to get, supplied him with the funds for his fight for the Senate in 1858. The panic of 1857 put the Democrats on the defensive, while Douglas' break with Buchanan further weakened the hold of the Little Giant on Illinois. In the meantime, Lincoln had put himself on Douglas' trail, answered all his speeches with shrewd, close-knit, powerful arguments, and had made himself the Little Giant's most formidable antagonist. When the time came, careful management secured him the senatorial nomination on the Republican ticket. Lincoln then stepped forth into the national arena, with his eye upon the presidency as a reward for success against Douglas.

In pleasing contrast to his treatment of Jefferson in his *Life of John Marshall*, Mr. Beveridge has treated Douglas with scrupulous fairness. It is easy to see that he admires him, and one might almost say that Douglas is the hero of the second volume of this work. He was courageous, truthful, powerful, and aggressive; and, with one exception, he was most unjustly slandered by his opponents, who seldom dared to brave him to his face. Lincoln was the exception; for though he tried to meet Douglas at every point, his keen and consistent criticism never descended to personalities. But Mr. Beveridge's impartiality has extended to the whole political scene. His exposition of the southern position reveals an effort to be scrupulously fair. He is considerate even of Buchanan, who has not been well treated by most historians. His interpretation of the attitude of Chief Justice Taney and the majority of the court in the Dred Scott case is another instance, although here he is in accord with other recent investigators who have demolished the old charge of a pro-slavery conspiracy. The only ones who can complain of Mr. Beveridge are those who still hold to the dogma of the immaculate conception of the Republican Party and the exalted purity of its ante-bellum leaders. But Beveridge does not accuse them; he merely reveals them as politicians. He knew and understood politicians.

When death stopped the busy hand of the author he was in the midst of the historic Lincoln-Douglas debates of 1858. It had been his intention to carry these two volumes to Lincoln's first inauguration in March, 1861, and to devote two more volumes to the war and its effect upon American institutions. It is a matter of profound and universal regret that this great work was broken off just as Mr. Beveridge was reaching his main objective, for it is an open secret that he had planned an assault upon a number of sacred historical traditions. From the notes which lay near at hand, Mr. Worthington C. Ford has compiled a brief sketch (pp. 695–713) of the developments in Lincoln's progress from the point where Mr. Beveridge dropped his pen to the first inauguration.

Mr. Ford also prepared the manuscript for the printer and saw it through the press.

CHARLES W. RAMSDELL.

The University of Texas.

Robson, William A., *Justice and Administrative Law.* (London: Macmillan and Company, Limited, 1928, pp. xviii, 346.)

Dickinson, John, *Administrative Justice and the Supremacy of Law in the United States.* (Cambridge, Harvard University Press, 1927, pp. xiii, 403.)

The first work is a very successful account of the development of administrative justice in Great Britain. It is a belated recognition of the fact that a large body of administrative law is one of the constituent elements of the constitution of Great Britain, which neither Dicey nor subsequent writers recognized. It is a particularly interesting study to students of administrative science because it indicates that even Englishmen are beginning to look beneath mere forms for the actual working basis of their constitutional system. After all, is the constitution of a country the theoretical or actual basis of the operation of its political institutions? Is the rule of law a mere heavenly vision or a standard which determines and actually controls the everyday workings of a governmental system?

It has long been recognized on the Continent that a system of justice in which isolated individuals contest disputed personal and property rights is wholly inadequate in a society in which the state is a huge service institution. This invasion of an administrative justice in Great Britain is an inevitable concomitant of the abandonment of *laissez faire*, and, therefore, is neither accidental nor temporary. It is a broader conception of justice than the juridical theory and embraces in its scope a consideration of not merely the so-called legal element but also the economic, social, political, and psychological factors.

This new type of justice in Great Britain is administered through the executive departments, boards, and commissions, and also through voluntary associations. A chapter is devoted to "Administrative Tribunals" in which the judicial functions of certain ministries and boards are developed. Likewise, a chapter is given to "Domestic Tribunals" under which voluntary organizations administering a purely extra-legal and informal justice are discussed in a rather illuminating manner. One of the most satisfying features of the book is a discussion of the "Judicial Mind," in which the technique of the judge is revealed with painful frankness The inconsistency, artificiality, and even partisanship of the judicial mind are exposed. The legal sophistries and legerdemain in which the bench indulges to the exclusion of an expeditious and substantial justice are among the reasons for the turning of society toward administrative justice.

The purpose of the second work is to show that an "administrative justice" has developed in the United States in contradistinction to the traditional justice administered by courts of law. The common law system of jurisprudence makes no provision for "administrative justice"

or administrative law, taking the position that the rights of individuals or corporations whether in their relations with each other or the government are matters for final determination by courts of law. The extent to which this new development has taken place, the author points out, is scarcely short of a revolution.

The significance of this newer tendency is that in the United States we are coming to have government through law instead of government under law. That is, law is being regarded as an instrument of government rather than as a limitation upon governmental action. In other words the feud between government and law generally phrased in the United States as a government of law and in Great Britain by Dicey as the "Rule of Law" is breaking down.

In the field of government there are two rival agencies—administration and law, the former personal and the latter impersonal—the former exercises preventive measures and the latter corrective through redress or punishment. Administration is governed by ends; law by rules. The former guides and supervises the action of individuals and groups; the latter leaves them free but punishes for the violation of its rules. The former may be arbitrary and corrupt while the latter is expected to safeguard society against ignorant or capricious magistrates. The former is expeditious, progressive, and efficient, if well administered; the latter is slow, expensive, and traditional or reactionary. Administration is particularly fitted to meet the requirements of a complex social order while law as administered by courts is more suited to the needs of a simple and individualistic society. Because of the manifold increase in the functions of government, the delicate character of modern society, the need for a preventive justice, the advantage of investigation enjoyed by administrative agents, the demand for a more expeditious justice by society, particularly business interests, the failure of the courts of law to readjust their organization and administration to meet these changes and requirements are the major reasons for the development of these newer agencies of justice to the exclusion of the rule of law in both Great Britain and the United States.

The liaison between administrative agents of justice and the courts is maintained by judicial review of so-called errors of law. By this means the courts compel administrative agents to observe the rule of law as previously formulated and are also able to develop the law by giving legal significance to new facts and circumstances hitherto regarded as irrelevant to legal process. Hence, in reviewing the orders of administrative agents the courts take almost the same attitude as they do toward the fact-finding functions of juries.

It is in this relation that the courts still keep their hands on public policy. In reviewing the orders of an administrative agent dealing with a social service in which a community policy is involved, the courts are faced with a different problem from that of administering a fixed and settled rule of law. It is undoubtedly true that it is in the former capacity that courts are giving least satisfaction. Law is less flexible than policy. How well the courts succeed in adapting and expanding

the law to fit the needs of a progressive society depends on their conception of the law. Is the law a piece of granite, a "herbarium of dried plants," a matter of certainty and fixity, or is it an eternal search for certainty? For instance, is the concept of value a fixed or a constantly changing one? In the field of social policy, abstractions must be controlled by the facts behind them. It is true that a Holmes or a Brandeis would have no difficulty in discovering substance beneath form, but unfortunately the legal profession contains a paucity of such material and the bench is rarely supplied with its saving grace.

This volume raises the major problems connected with the modification and adaptation of our legal order to the purposes of a "Great Society" and discusses them in the lights of experience and social needs. It is an exceedingly important study and is well done. The legal profession would do well to catch its point of view and profit from its revelations and implications.

C. PERRY PATTERSON.

The University of Texas.

The Making of New Germany; the Memoirs of Philipp Scheidemann, two volumes, translated by J. E. Michell. (New York: D. Appleton and Company; 1929, pp. xii, 368; pp. xii, 373.)

This is an extremely interesting addition to the considerable body of personal reminiscences and individual interpretations of public affairs which Germany has produced during the last few years. Philipp Scheidemann describes in straightforward and vivid fashion the chief events of the remarkable and dramatic career which carried him from "a ramshackle house in the narrow, bumpy Michel's Allen in Old Kassel," to the leadership of the Social Democratic Party, power and influence in the Reichstag, and the prime ministry when Ebert became the first republican president of Germany. It should be remarked in passing that the translator has done a very effective piece of work in rendering into English the lively and sometimes surprisingly unconventional German of Scheidemann.

To an American reader, one of the most striking things about the book is the importance in its author's eyes, of the party which he served so long and so faithfully. Not the most loyal member of either of our own largest parties—no, nor yet the most convinced progressive—could be so possessed by, immersed in, surrendered to, his party, as is Scheidemann. Whether this is due to the fact that our major parties represent the "ins" and the "outs" rather than any genuine cleavage along important lines of policy, whereas Scheidemann's party stands for definite policies, some of which, at least, are capable of arousing the most passionate devotion (and the most bitter opposition)—or whether it is due to a multiplicity of causes rooted in the social and political backgrounds, it is hard to say; but the fact must be recognized that the story of Scheidemann is largely the story of the Social Democratic Party.

It would be a misrepresentation of the facts, however, to assume that this means an attitude of slavish devotion. Scheidemann's party interests took the form of endeavors to shape party policy as well as

to carry it out. Many details, often meaningless and wearisome to the general reader, but instructive nevertheless, show the diversities of opinion within the party ranks, and the sharp battles in committee and elsewhere which must take place in order that the party might present a united front.

Another very interesting feature of these memoirs is Scheidemann's characterizations of other public men, and his comments upon their personality and their actions. Here, it must be admitted, he is not at his best. A certain lack of generosity, an exaggerated tendency to find fault, mark almost every line devoted to these topics. The long habit of political opposition can account for this attitude in part; nor is it to be denied that there were plenty of occasions for finding fault. None the less, Scheidemann's indulgence in this tendency is so excessive as to arouse doubts as to the soundness of his judgment of men.

The most dramatic portion of the book is the description of the last days of Germany under the old regime, culminating in the proclamation of the Republic by Scheidemann. He believes that if he had not made this proclamation, Liebknecht would have swept Berlin, and so perhaps Germany, into accepting a Soviet Government, which to Scheidemann meant "the Russian folly, the Bolshevist tyranny, the substitute for the tyranny of the Czars."

After reaching this point in the colorful pages, the reader is naturally anxious for details of the National Assembly as seen through Scheidemann's eyes. To his surprise, he will find only the barest mention of the Assembly and its work. This is the most disappointing portion of the book. Whether Scheidemann omitted to treat the history of the Assembly simply because the task was so enormous, or whether his genius for practical politics found the details of constitution making unexciting and distasteful, is not made clear; but for some reason the birth of the new Constitution is passed over most superficially. Of the Constitution itself, Scheidemann says: "The Constitution of the German Republic has still many weak spots, for in politics nothing is perfect, but it cannot be denied that it is the freest constitution in the world."

Through more than seven hundred lively pages we follow Scheidemann, interested not only in his ideas, but in the man, whose personality seems very vivid as his frequently inelegant but always trenchant sentences ring out. A bold, quick, able, active, clear minded but not broadly intelligent, useful, truculent, devoted personality it is. The book is uneven and full of surprises, and the book reveals quite clearly the forceful man, the strange combination of fighter and idealist, whose story it is.

FREDERICK F. BLACHLY.

Brookings Institution.

White, Leonard Dupee, *The Prestige Value of Public Employment in Chicago.* (Chicago: The University of Chicago Press, 1929, pp. xix, 183.)

As a piece of pioneering this study is significant. Students of political science have long had the conviction that public employment is not highly esteemed, but this is the first study to bear out that conviction.

Dr. White and his assistants interviewed more than 5,000 residents of Chicago, seeking to secure the opinions of people that would, in so far as possible, be representative of Chicago as a whole, including the rich and the poor; the foreign-born, negroes, and native whites; young and old; those poorly educated and those highly educated; and laborers as well as professional men. These extremes with gradations in between were all represented, but the opinions of the public employees themselves were not recorded. Two schedules were used, of which the first contained two parts. The first section contained twenty paired occupations, each pair including a position in the public service and one of equal duties and salary in private employment. In each case the individual was asked to check the position for which he held the higher esteem. The second section proposed fifteen questions concerning the relative merits of public and private employment, and the comparative courtesy and efficiency of the employees. This first schedule was checked by the larger group of 4,680 persons. The second schedule, containing a word-association text, a rating scale for twenty occupations in public service as against each other, and three rating scales to test opinion as to the courtesy, honesty, and efficiency of city employees, reached 690 persons. In addition, a brief statistical study was made of newspaper stimuli, since the author considered them one of the principal means of influencing public opinion on the prestige value of public employment.

As a result of the study the gross prestige index was —14.06, which was reduced to —11.70 when adjustment was made for certain discrepancies in the sample of the population taken. Thus considerably more of the people had unfavorable opinions than had favorable opinions. Analysis was made according to sex, age, education, occupation, race and nationality, and economic status. The women as a whole had a higher regard for public employment than the men, though the men regarded the positions of policeman and detective more highly than did the women. Young people thought better of public employment than did older people. There seemed to be a gradual disillusionment after the first rapid drop between the five-year periods of 15–19 years and 20–24 years. Education also seemed to bring disillusionment, for the prestige index varied from +18.66 for those with 6 years or less of education to —43.10 for those with more than 16 years of education. The unskilled workers thought rather highly of public employment (+33.72), but those rising in the scale of occupations thought less and less, the highest or professional group having an index of —46.44. In line with this, the foreign-born and those of foreign-born parents as well as the negroes had a higher prestige index than the native whites. The economic differential, determined by the rent paid per room, showed those lowest in economic status to have the highest prestige index, and vice versa. As Dr. White concludes, "Employment by the city of Chicago apparently tends to command the respect of the immature, the uneducated, the foreign-born, and the laboring people." (p. 144.)

City employees suffered by comparison with employees of private corporations as regards courtesy, efficiency, honesty, and other such desirable qualities. In spite of this unfavorable attitude of the people

toward public employment, there were twice as many of those who said their dealings with public employees and officials had been satisfactory, as of those who said the opposite. By way of explanation, the study of newspaper stimuli has significance, though it is not an extensive study, covering only six weeks in the fall of 1927 and two weeks in the spring of 1928. The unfavorable newspaper items exceeded those favorable by a large number. Analysis was made to show the departments blamed and praised, and to show the attitudes of the several Chicago newspapers individually. Evidently, then, the Chicago people do not esteem lightly the public employment because of their own contacts, but because of outside influences. Professor White gives five causes for the low prestige: the prevailing opinion that politics rules the city administration regardless of the established merit system, the continued abstention of the well-to-do business element from active participation in the city's affairs, the unfavorable attitude of the press, the bad appearance of the interior of the City Hall, and the lack of *esprit de corps* on the part of the employees.

The first effect of such a study will likely be the further lowering of the morale among Chicago employees, for every one regards his job more highly if he knows it is generally esteemed. It is hoped that Professor White will forge the connecting link between this study and his former one, "Conditions of Municipal Employment in Chicago: A Study in Morale," and that eventually both the morale of the Chicago employees and the prestige of their positions will be raised by virtue of the revelations of these two excellent studies.

FRANK M. STEWART.

The University of Texas.

Meakin, Walter, *The New Industrial Revolution.* (New York: Brentano's, 1929, pp. 284.)

At the close of the World War British industrialism found itself in a sadly crippled state—with shrunken markets, expanded shipping, contracted trade, expanded plant capacity, reduced demands for cotton, coal, iron, and steel. The demoralization of its rival, German industry, was far more complete—its foreign markets eliminated, its shipping destroyed, the financial structure essential to its effective functioning completely wrecked. Although the industrial outlook of both countries was far from healthy the two had arrived at a somewhat similar destination by quite different routes. English industry had functioned for almost a century and a half under "that obvious and simple system of natural liberty" and bade fair to reap whatever advantages victory in the World War might have been presumed to hold. Its younger German sister, shaped in the pattern of the cartel and trust, had developed under the beneficent guidance of a mercantilistic state, a state eventually crushed by four years of unsuccessful warfare and confronted with a reparation charge such as no other nation has been called upon to bear. Although the maladjustments in British industry were recognized, they were largely attributed to the war and it was believed by many that industry would soon drift comfortably back into the situation of 1913

from which vantage point rapid strides ahead might be looked for. In the German case competent observers agreed that it would take many years to restore industry to even its pre-war status; meanwhile, the other industrial nations would have gained a superiority beyond the hope of successful German rivalry.

Ten years after the close of the war the financial structure of German industry had been made whole, and industry itself had undergone changes of such tremendous import as to justify the descriptive appellation "the new industrial revolution." English industry, on the other hand, is still groping to find a way out. It is of these developments that Mr. Meakin, himself an Englishman, writes. In statistical detail are presented the results of the German program for the rationalization of her basic industries—electrical and power, coal, steel, and chemical—results which indicate that German industry is in many respects on a sounder basis today than before the great cataclysm. The program of rationalization has involved the closing down of inefficient plants and the concentration of production on the more efficient, the efficiency of which has been further increased by the increased scale of output and by the more complete mechanization and modernization which this has permitted; it has likewise involved the application of that program of scientific management comprehended in the Germanized American terms *Taylorismus* and *Fordismus;* and it has involved something more than this: "the employment"—to use the phrasing of the German National Economic Advisory Board—"of all means of technique and ordered plans which serve to elevate the whole of industry and to increase production, lower costs, and improve quality."

To the achievement of this program the German system of industrial control was well adapted. ". . . The long pre-war experience of cartel organization, and the pooling of resources which it involved, made it easier to adopt and apply the necessary measures." A state, accustomed to control of industry for state ends "contributed much to the framing of a common policy for the application of the principles of rationalization" by the creation of the National Economic Advisory Board. Where the counsel of the state proved inadequate to achieve the desired end, the state has not refrained from lifting its authoritative hand to bring about those changes essential to the more orderly and efficient conduct of industry. Witness the state's "socialization" of coal and potash!

British industry, on the other hand, handicapped by the "deep-rooted ideas and habits of thought which have persisted from the days of industrial *laissez-faire*," has continued to languish. Its sturdy individualism, well adapted as it was to the adventurous work of a pioneer period, seems to have been inadequate to bring about that concentration of control essential to efficiency under the rule of the machine.

Mr. Meakin presents an interesting popular survey of the post-war developments in these two great industrial countries, and an analysis of the basic factors at play in each. It seems to the reviewer, however, that the author fails tc appreciate certain weaknesses still existent in the German system of industrial control. The cartel system, through

control over price and the allocation of a production quota to all those who enter the industry, carries with it the germs of its own destruction; and there is evidence in numerous German industries today of danger of over-expansion despite the rationalization program which has been effected. On the other hand, the coal and potash industries which have, through state control, largely solved this problem of over-expansion, have been "socialized" only in name.

Mr. Meakin's book remains, nevertheless, a valuable contribution to the literature of post-war developments in the problem of social control of industrial processes.

GEORGE WARD STOCKING.

The University of Texas.

Taylor, Paul S., *Mexican Labor in the United States.* (Berkeley: University of California Publications in Economics, 1928–1929, pp. i, 255.)

Much attention has been given of late to the various problems arising from Mexican labor in the United States. This timely and impartial study undertaken under the auspices of the Committee on Scientific Aspects of Human Migration of the Social Science Research Council is most *apropos*. The results of the personal investigations and study carried on by Dr. Taylor were issued in three separate monographs: *Imperial Valley; Valley of the South Platte, Colorado;* and *Migration Statistics*, paged consecutively to form volume six of the University of California Publications in Economics.

Mexicans make up one-third of the population of Imperial Valley and form an inseparable part of the social and economic life of the community. In the case of the Valley of the Platte, thousands of Mexicans from the Southwest migrate in the spring to the sugar beet fields, many of whom remain permanently as residents. This study deals only with the Mexican agricultural laborer and the problems presented by the contact of an American community and a large resident Mexican laboring population. With numerous tables, plentiful illustrations of concrete cases and colorful opinions from the various groups described, the author has impartially and judicially drawn a forceful picture of a living, social experiment that deserves further study. Professedly sympathetic, he has shown clearly that the Mexican farm hand is the victim of racial prejudice that can be corrected only through education not only of the Mexican, but of the American farmer as well.

In the first monograph dealing with conditions in Imperial Valley we see that the racial prejudice of any given community in this area is in direct proportion to the number of Mexicans present and the permanency of their residence. Because of its cheapness, Mexican labor has replaced Japanese, Hindu, and Russian labor. The general attitude of the various communities is dictated by convenience and expediency. At the peak of the beet season when his services are at a premium, racial prejudice is at its lowest ebb, but as soon as the crop is gathered, whether of melons or beets and there is no more need for his services, his presence is considered a drain on the community.

At the basis of the social, economic, and educational isolation noted by the author is the economic inferiority of the Mexican laborer whose annual earnings do not exceed $800.00, and more often are below $600.00. This is due in great part to the irregular character of his employment and to the failure of American farmers to provide work throughout the winter months.

It is interesting to note the change in the nomenclature used in the second monograph where a distinction is made between Mexicans from Old Mexico and Mexicans from Texas, Arizona, and New Mexico, sometimes referred to as Mexican-Americans. In the first monograph Dr. Taylor followed the generally accepted but scientifically incorrect practice of using "white" and "Mexican" to distinguish between American farmers and Mexican laborers.

Of particular interest is the analysis made of the pseudo statistics of the United States Immigration Service concerning Mexicans entering through the various inland ports along the border. The writer points out the great misconceptions that have resulted from the improper use of this unreal and unscientific statistics during the recent agitation with regard to the restriction of Mexican immigration as proposed by Senator Box.

The three monographs presented in this volume of the University of California Publications in Economics through the active coöperation of the Committee on Scientific Aspects of Human Migration of the Social Science Research Council are a valuable contribution to the meager knowledge of the living conditions of the Mexican laborer in the United States and the problems he presents in everyday American life.

C. E. CASTAÑEDA.

The University of Texas.

McKeon, Richard, *The Philosophy of Spinoza.* (New York: Longmans, Green & Co., 1928, pp. ix, 345.)

In recent years there has been a deepening and growing interest in the philosophy of Spinoza. It has been for us as for his contemporaries a peculiarly difficult philosophy to understand. Critics have assailed it from every side, condemning it as atheism, as thinly veiled naturalism, as God-intoxicated pantheism. Nineteenth century thought emboldened by the principle of evolution and by the evolutionary idealism of Hegel, tossed Spinoza's metaphysics aside as a sterile abstractionism in which all distinctions were absorbed in a conceptual rather than real unity of substance. A common assumption of all or most of the criticisms was the unquestioned acceptance of Cartesianism as the logical basis and context of Spinoza's thinking. Consequently the latter has been regarded as premised, at least indirectly, upon concepts of a mathematico-physical order, and as focused upon the psycho-physical relation (the mind-body problem) and the epistemological problem of how thought knows extension of nature. Approaching Spinoza's thought in this way, as was natural, we have found only a verbal artifice in its effort to connect Descartes' mutually exclusive "substances," mind and matter, by conceiving them as attributes of a single substance, God. We have found no genuine unity in Spinoza's thought.

Mr. McKeon in an elaborate and scholarly work opposes the conventional interpretation by recasting the characters and by reconstructing the plot. He tries to exhibit and prove the unity of Spinoza's thought. Divided into two parts, the book in the first seeks to correct the historical background and motivation, and in the second uncovers the system in its logical connections and divisions. As regards the first, the fundamental influences and pattern of ideas are medieval, indirectly platonic and aristotelian, for the reason, among others, that in all medieval philosophies God is at once the source of all being and all intelligibility. This parallelism between ontology and a priori logic is characteristic of Spinoza. Where for Descartes philosophy starts with self-consciousness as the indubitable datum and only derivatively works back to God, thus making psychology methodologically prior to metaphysics, for Spinoza God or substance (of which there can be only one) is the first and last word, being the only fact completely intelligible in itself and the only fact in terms of which every finite fact ("mode") can be rendered intelligible. The chapter on Spinoza's relation to experimental science is illuminating. The occasion upon which a physical object is manifested sheds no light on the cause or the nature of the object. The experimental method is rejected and the mathematical method accepted because "The interest of mathematics is to discover the cause which will explain the essence of the thing however it may have been produced."

Of Part II it may be said that Mr. McKeon makes a good case for the unity of Spinoza's thought. However, of this part as in less measure of the whole, it is regrettable that the language is ponderous and the movement of thought slow and uninspired. The book would be greatly improved by a lighter style, an explicit statement and refutation of the conventional criticisms of Spinoza's system, and a comparative statement of that system in terms of the ideas of philosophies with which we are more at home. The book is well documented and includes an elaborate bibliography.

D. A. Piatt.

The University of Texas.

Grisell, T. O., *Budgetary Control of Distribution.* (New York: Harper and Bros., 1929, pp. 94.)

Budgetary Control of Distribution is a new title for one of the mounting list of business books. The fact that it is the second to appear to date, and that it contains only 94 pages, including a number of full page charts and forms, indicates the paucity of material on this subject, as well as the initiative and conciseness of its author.

Grisell's thesis might be said to be, "It is the distribution expense rate, not sales volume, which a manufacturer should consider in establishing his sales budget." His plan of procedure is based upon trading areas which have been delineated by checking newspaper circulation in some 250 geographical territories throughout the United States. Similar areas are grouped together for purposes of comparison. The total sales figure in each area for the preceding period is secured, manufacturing cost, general overhead, minimum satisfactory profit, general sales administration, and branch office sales and administration expenses are all

deducted, leaving the remainder available for personal selling and advertising. The needs of each area are studied individually and upon this basis, these expenses are apportioned and the new quota set.

Trading areas based upon county lines were presented to a group, of which this writer was one, over 9 years ago by Dr. Paul Cherington. Newspaper circulation as a basis for determining the size and location of trading areas has been worked out independently by Dr. W. J. Reilly. Grisell's contribution comes not so much in presenting any new theory of budgetary control as in carefully describing how *a* method can be put into operation. As might be expected from an advertising agency man, he overemphasizes advertising and almost forgets that personal selling introduces a distribution expense which cannot under any circumstances be called distribution overhead. Neither is he entirely clear on how local advertising and selling expense is apportioned and how the additional quota is established. The reader is rather left with the belief that in spite of the fact that the problem is quite well defined, that in spite of the fact that all selling expense becomes a direct charge, and in spite of the fact that the trading areas are carefully chosen and scientifically grouped, the final sales quota remains the result of the judgment, good and bad, of one or more officials or employees upon whom falls the responsibility of putting the plan into operation.

WILFORD L. WHITE.

The University of Texas.

Maxey, Chester C., *Urban Democracy.* (New York: D. C. Heath and Company, 1929, pp. v, 408.)

This book presents municipal government as a problem of democracy. It covers both American and European practices in the fields of municipal government and administration. While only one chapter is given to European systems of city government, frequent reference is made in other chapters to European practice relative to American problems. One chapter is devoted to municipal institutions in Latin-America. To attempt to cover both government and administration, including both American and European practice and experience, is a heavy assignment, and when it is covered in four hundred pages, as has been done in this book, it means that the treatment cannot be intensive.

There are twenty-five chapters in the book; the first five present an excellent discussion of the problem of urban democracy, emphasis being placed upon the sociological aspects; chapters six to fifteen emphasize problems of government organization; and the last ten chapters cover some of the problems of administration. When we consider that other authors are devoting over thirty chapters to municipal administration alone, we can see that it was not possible for Professor Maxey to go into details as to practices; rather was it necessary that he be content with the presentation of the problems. No attempt has been made to be dogmatic or definitive as to the various problems discussed; rather is he interested in trends and tendencies.

The book should prove to be a suitable text for courses where only one semester is given to municipal government and administration. It

will be of value in giving students a birdseye view of the whole field of municipal government . . . of the problems of urban democracy. It is, however, unsuited for textbook purposes in more intensive courses where a semester is given to municipal government and another to municipal administration.

Professor Maxey writes in his usual readable style. Selected references and suggested questions and problems at the end of each chapter add to the value of the book for text use.

CHARLES M. KNEIER.

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BOOK NOTES

In *William Byrd's Histories of the Dividing Lines Betwixt Virginia and North Carolina* (Raleigh: The North Carolina Historical Commission, 1929, pp. xxviii, 341), Professor William K. Boyd publishes for the first time the *Secret History of the Line*. The so-called *History of the Dividing Line* was published first in 1841 and has been republished a number of times since then, but the secret history though long known to be in existence seemed not to have impressed itself upon historical scholars. These two accounts differ in many details. In the first place the secret history is only about half as long as the better known account, and undoubtedly it must have been the first account which Byrd wrote of his labors. Also, comments on men and affairs differ in the two accounts. In the secret history Byrd gives the principal characters fictitious names and has more pithy things to say about them than he does in the other account, yet it is only in the longer account that he takes occasion to show his extreme distaste for North Carolina, all its inhabitants and all their doings.

The dispute over the dividing line between Virginia and North Carolina arose around the identity of certain place names used in the second charter to the Carolina Proprietors in 1665, and the trouble was brought to a direct issue when the regions through which the boundaries should run became settled. A conflict of jurisdiction long troubled the two colonies, and finally in 1728 commissioners were appointed by both colonies and the line was run as far west as the mountains, though the North Carolina commissioners left before the mountains were reached. Byrd as a historian is open to many criticisms, the most serious being certain fixed prejudices. But for lively style and humorous expression, it would be hard to equal him in all colonial literature.

Professor Boyd has edited these two histories with precision and ability. The two accounts are made to parallel each other on opposite pages of the book, so that a comparison is made easy. An introduction gives the histories their proper setting and an index gives ready access to the contents.

E. M. C.

Under the title *Empire Government* (Cambridge: Harvard University Press, 1929, pp. 256) Mr. Manfred Nathan has published a little book which will be found to be quite satisfactory as a usable handbook on

the British Empire. It is divided into two parts, the first dealing with the subject "Territorial Government" and the second with "Division and Exercise of Governmental Powers." In Part I the author takes up briefly but intelligently the government of each of the several types of British territorial holdings and the relation which each bears to the mother government, after an introductory chapter on "The Nature of the British Empire." There is an especially lucid summary on the self-governing dominions and the status which they occupy in the Empire. Part II is devoted to the Crown, Parliament, Executive Government, the Judiciary, and the Subject, and here again the method of treatment will on the whole be found satisfactory. The book is not of course without its faults, some resulting from a failure to catch obvious errors in reading the proof and some from slips of the pen. Thus on p. 85 (line 11), *equality of status* reads *equalty of statius;* on p. 104 (line 6) is found a sentence beginning "It was deemed premature at present to . . ."; and on p. 203 (lines 20–21) there is a sentence which is not a sentence at all. But these are after all minor offenses, for the book on the whole is not characterized by such slips. It must indeed be given the stamp of approval, for, while nothing startlingly new appears in its pages, the author has succeeded in marshalling his facts for review in such a way as to make a place for his volume.

R. C. M.

In *Our Business Civilization* (New York: Albert and Charles Boni, 1929, pp. 306) James Truslow Adams brings together a number of essays on business, ethics, the younger generation, politics, and the art of living. He has a sharp pen which goes much deeper than the ordinary critic of his own times. His familiarity with busines, for example, gives him an intimate and substantial point of view. He has in reality written about human nature and is objecting to the results of the increasing tempo which a smaller and smaller world makes possible.

When 50 miles was 50 miles, an individual lived largely to himself and, as a result of the lack of contact with a wide variety of fast moving ideas, lived deeply those few experiences with which his environment furnished him. Today, when 50 miles may be the fraction of a second on the radio, a moment by telephone, and a few minutes by the airplane, the *variety* of experiences receives more attention than do the *characteristics* of any *one* experience. In a democracy, where authority is diffused, and where initiative is encouraged, and in a time in which variety is cultivated at the expense of depth, we must either agree with Adams or find new standards of measuring human satisfaction.

W. L. W.

Ernest J. Eberling in his *Congressional Investigations* (New York: Columbia University Press, 1928, pp. 452) has presented, as the subtitle indicates, "a study of the origin and development of the power of Congress to investigate and punish for contempt." "The recent experiences of the United States Senate," the author states, "in attempting to compel the testimony of witnesses and punish them for contempt

in the course of its investigations, and the procedure of its committees in making these investigations have caused many questions to be asked concerning the inquisitorial power of Congress." The treatment, while historical, emphasizes recent developments. The book is divided into six chapters; the first four giving the background down to 1876; the last two tracing, respectively, the statutory evolution and judicial review of the inquisitorial power since that date. As a study it is carefully done and will prove useful to students of legislation and of recent trends in the development of Congressional power.

O. D. W.

A great service has been rendered to students of the early law and political institutions of colonial America in the reprinting of the 1648 edition of *The Laws and Liberties of Massachusetts* (Cambridge, Harvard University Press, 1929, pp. ix, 59). The only existing copy of this edition as yet discovered was unearthed not many years ago in England. It eventually became the property of the Huntington Library in California. The present reprinting reproduces the original as exactly as possible and in similar type. In an introduction by Max Farrand an explanation is made of the significance of the document, the facts of its enactment and the history of the 1648 edition. This early code stands, to quote the introduction, "as the basis of all Massachusetts legislation, and influencing as well the legislation of other colonies, notably Connecticut and New Haven. It is furthermore the first attempt at a comprehensive reduction into one form of a body of legislation of an English-speaking country."

O. D. W.

India, edited by D. R. Bhandarkar, Carmichael Professor of Ancient Indian History and Culture in the University of Calcutta, is a collection of twenty-three papers upon a variety of Indian problems. They make up Part II of Volume CXLV of *The Annals of the American Academy of Political and Social Science* (Philadedphia, September, 1929, pp. 203). Six papers relate to government and politics, eight to economic problems, five to education and journalism, and four to social problems. Some two-thirds of the writers are Indians who have attained high rank in government or business in their native land, and the others are Britons who have seen long service in public or private capacities in India. They have, on the whole, prepared a satisfactory survey of the chief problems before present-day India. Criticism is uniformly constructive, although there is an occasional tendency to underestimate the difficulties that Britain has faced and is facing.

C. T.

In their book, *Sterilization for Human Betterment* (New York: The Macmillan Company, 1929), the authors, E. S. Gosney and Paul Popenoe, base their conclusions about this subject largely upon the experience of California where 3,428 men and 2,827 women have been sterilized in State hospitals since 1909. Of this number, seven are known to be failures and four resulted in death, two from the anaesthetic and two

from infection. On the whole the results have been satisfactory. A resume of legislation and an attempt to evaluate the results of the operation of the laws in other states is also included in this short work. The book is well documented and shows a careful grasp of the problem and of its social consequences.

W. E. G.

In *Some Aspects of the Recent Foreign Policy of Sweden* (Berkeley: University of California Press, 1929, pp. 127) the author, Eric Cyril Bellquist, traces the part played by Sweden in the peace movement since the World War and in the development of the activities and the institutions of the League. Other matters covered are the position of Sweden as a neutral during the war and its position in the Aland Islands dispute. The treatment of the question of the admission of Germany into the League and of the resulting conflict over the enlargement of the Council is given special emphasis. Far from overdoing his subject, it may be said that the author is rather mild in depicting the role that Sweden, a state with no imperialistic problems and ambitions, is playing in the great international drama as the defender of justice and peace.

C. T.

Thomas Aquinas, His Personality and Thought by Dr. Martin Grabmann of the University of Munich, is a translation by Virgil Michel published by Longmans, Green and Company (New York and London, 1928, pp. ix, 191). It is divided into two parts: Part One: "Personality of St. Thomas"; Part Two: "The Thomistic Synthesis" and is intended as a summary of Thomas Aquinas's life and philosophy. Of particular interest to social scientists are the chapters (XI, XII, XIII) on his "System of Ethics," "Political and Social Philosophy," and "Thoughts on Christianity and the Church." The book contains a complete list of the works of St. Thomas (pp. 19–27).

O. D. W.

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